Q. How long have you been in the business, Mr. Adley?

A. Over thirty years.

Q. Will you describe the authority of the territory in which the Adley Express Company operates?

A. We operate between Philadelphia and Boston and [fol. 3196] intermediate points. We cover a large part of Massachusetts, with the exception of the Cape Cod area. We cover the total state of Connecticut, 12 counties in New Jersey, and in Philadelphia we are going to raise it to 25 miles.

Q. Do you cover the state of Rhode Island?

A. Yes.

Q. Do you have intrastate rights in some of those states?

A. We have intrastate rights in Rhode Island, Massachusetts and Connecticut.

Q. Let's have some of your connections in the industry. Are you a director of the Connecticut Motor Transport Association?

A. Yes.

Q. How long have you been a director?

A. I think I have been a director ever since the association was started.

Q. How many years?

A. It is a good twenty years or over.

Q. Have you held any other office in that association?

A. I have been president also for two terms.

Q. Are you an officer of the Motor Carrier Council, Inc.?

A. I am President of that, also.

Q. Have you been a director of that?

A. I was a director and I now am President.

Q. For how long were you a director?

A. We organized it about three and a half years ago and [fol. 3197] I was one of the original directors.

Q. What does the Motor Carrier Council consist of?

A. It consists of 59 operators who are located in the Tri State area which consists of Connecticut, Massachusetts and Rhode Island.

Q. Of those 59 operators, what type of operators are they?

A. They are all general commodities, common carriers.

Q. In interstate commerce?

A. Yes.

Q. Certificated by the Commission?

A. Yes.

Q. Do you hold any office in the Eastern Motor Freight Bureau?

A. I am a director of the Eastern Motor Freight Bureau.

Q. How long have you been a director of that bureau?

A. About ten years.

Q. Will you tell us something about the Adley Express Company? How many vehicles does the Adley Express Company own?

A. Approximately 425. It might be more or less, but not much.

Q. Does the Adley Express Company lease any equipment?

A. We lease a few trucks in Philadelphia. Those are used to expedite the pick-up and delivery of the local freight in that town. Of course, we only lease the truck. These trucks are manned by our own men.

Q. Are those small trucks?

A. They are small delivery and pick-up trucks.

[fol. 3198] Q. How many of those do you lease?

A. Well, we run probably a low of five and a maximum of probably ten.

Q. How many terminals does the Adley Express Company operate?

A. Eleven.

Q. Will you tell us where they are located?

A. We have terminals in Boston, Providence, Worcester, Springfield, Hartford, New London, New Haven, Bridgeport; Nutley, New Jersey; Trenton, New Jersey, and Philadelphia.

Q. How many of those terminals does the Adley Express Company own?

A. We own them all with the exception of Philadelphia and Bridgeport. These two terminals were built specially for us under long-term lease. Of course, Trenton, being only a small terminal, we rent that.

Q. Now, these terminals which you have described that were built for you and the ones which you own, are they built for a special purpose?

A. The terminals that we built were built specially for our particular line of business. These terminals are all fireproof buildings. They have concrete platforms. They are constructed in such a manner that the trucks can back right in and be under cover at all times. The buildings are heated and sprinkled. Every detail has been put into these buildings so we can handle our freight economically and at the [fol. 3199] same time give the utmost protection to the shipments.

Q. Do you maintain or have a maintenance shop?

A. We have a maintenance shop in New Haven, Connecticut.

Q. Will you tell us more about the maintenance shop? First, how many people do you employ in your maintenance shop?

A. In our New Haven maintenance shop alone we have 80 men.

Q. Will you tell us how the maintenance shop operates, the method of operation?

A. Our maintenance shop is completely equipped and we practically can do any job on our trucks, regardless of the repairs or overhauling of it. We use sort of a unit interchange plan. In other words, we have extra motors for our particular vehicles. We have extra rear ends and other assemblies. We maintain our own machine shop there which is composed of milling machines, 24 inch lathes, piston grinders, brake drum grinders, metalizing machines. This machine is used where we rebuild a part or build a part up when it is worn, particularly on our banjos, which is part of the rear end. After a hundred thousand miles or so, they wear these and we have to bonderize them and we spray this metal on them and build them up. We do practically everything with the exception of regrinding our own crank shafts.

Q. Do you have other departments in your maintenance shop?

A. We have what we call our body shop. All our bodies for our city units are constructed there and repaired there and all our trailers are repaired there.

[fol. 3200] Q. Do you have any other units in your maintenance shop?

A. Well, we have our own painting department. We have our own canvas shops. I don't know of anything other than the crank shafts and the springs which we sent out to be done.

Q. How many employees does the Adley Express Company employ, regular employees?

A. All told, regular employees?

Q. All told.

A. Approximately 650.

Q. Do you also have extra employees that you employ from time to time?

A. We have occasionally when there is a rush to put on extra men.

Q. Mr. Adley, have you ever driven a truck yourself?

Mr. Diehl: Excuse me, counsel. Can he tell us how many extra men he is usually using, or what the maximum is?

By Mr. Arpaia:

Q. What is the average number of extra employees that you use in peak periods?

A. It varies. It might be anywhere from ten to 25 a day.

Q. Have you driven a truck yourself?

A. Yes.

Q. Have you repaired trucks yourself?

A. Yes.

Q. Do you feel that you are qualified to know the mechanism of a truck and repair the truck?

[fol. 3201] A. I do.

Q. When did you start driving a truck yourself?

A. 1931.

Q. Do you have your terminals equipped with mechanics and repair equipment?

A. We have mechanics in every one of our terminals. These mechanics are stationed there to effect emergency repairs, to inspect the trucks before they go out, and when they come in, and, of course, if there is a breakdown on the road, the driver calls the nearest terminal and those mechanics are available to go out there and repair the truck and get it going.

Q. Are those mechanics on 24-hour service?

A. Yes.

Q. Will you tell us about the way any equipment damage is reported, the procedure which is used by your drivers?

A. We have a report and this report has sort of a diagram of the tractor, of the trailer, and of the straight job. If there is any particular damage on that truck, whether it be the fender or the body, an arrow is placed at that point as where the damage is.

Q. Is there also something on there which permits them to describe the damage?

A. Yes, it is in detail on various things like brakes and reflectors and things like that, whereby he places a check along there wherever the defect might be.

[fol. 3202] Q. What happens to those reports?

A. If he is going to a distant terminal, he turns the report over to the terminal manager when he arrives there.

Q. What does the terminal manager do with it?

A. He then inspects it with the mechanic and if the repair is required, it is effected at that point.

Q. Are your terminals connected with each other by any communication system?

A. We have a complete teletype system between all terminals.

Q. Do you also have telephones between all terminals?

A. Yes.

Q. Will you tell us what safety measures the Adley Express Company uses?

A. We have a safety department and we have a personnel department. The safety department is always working along the lines of safety. I will give you an idea. If there is an accident, it goes through the accident review section.

Q. Is that another department you are now talking about, in addition to the safety department?

A. Yes, that is in addition to the safety department. They go over this accident report thoroughly and analyze it and they try to set just what the cause of the accident was, whether it was carelessness or due to the condition of the equipment. Then they make their recommendations and turn it over to the personnel department.

[fol. 3203] Q. If the accident was due to some physical hazard such as highway or platform area or things of that kind, what steps would be taken?

Exam. Lawton: Do I understand that those are the two extremes of your territory north and south?

The Witness: Yes, they are, Boston and Philadelphia.

By Mr. Arpaia:

Q. As a result of the operations by carriers who use equipment that is owner-operated, what is the effect on this condition of unbalance?

A. Well, it unbalances our movement going south because I know of instances where there are trucks coming in from the south with probably loads of textiles and produce and perishables. They come in sometimes as far as Boston. When they get to Boston they are looking for a load back. They will take a load to Jersey, Philadelphia, any place so long as they can work themselves back to their original point.

Q. What is the effect on your condition of unbalance? Does it make it better or worse?

A. Well, it unbalances even more.

Q. What is the effect that has on your cost?

A. Well, naturally it gives us an unbalanced movement and that means our trucks have got to either run empty [fol. 3216] or light toward Philadelphia.

Q. As the unbalance increases, Mr. Adley, does that tend to increase your costs?

A. Definitely.

Q. In your own mind, Mr. Adley, do you make any distinction between a trip lessor, a man who gives a one-way trip lease, and a gypsy?

A. I don't see any difference in them.

Q. Will you explain why?

A. Well, let's assume there is a fellow leaving Georgia on a one-way trip. He will come in, we will say, to Boston. He delivers his load. He peddles himself to get a load back. Regardless, he will take the load, no matter where it is going, just so long as he can work himself back.

Q. You mean back to his original terminal?

A. That is right. In some instances some of those fellows don't get back for ten or fifteen days.

Q. Describe that more in detail. What happens?

Mr. Diehl: Yes, I would like him to tell how he knows when they get back.

The Witness: They will probably say they certainly can't get a load from Boston to Georgia. It is not going to be available. So they will probably take a load from Boston, we will say, to New Jersey and they will probably get a load in Jersey maybe to Philadelphia or maybe they get a load from Philadelphia to Baltimore and maybe they [fol. 3217] get a load from Baltimore to Richmond.

By Mr. Arpaia:

Q. So that from the time that he gets to his original destination point until the time that he gets back to his origin point he is a roamer?

A. That is right.

Q. Do you mean by that that he lends himself out or hires himself out to anybody?

A. Anywhere where he can get a load.

Q. From your observation and experience, do you know how those people are compensated, the people who do what you have just described?

A. Well, I know from dozens of them that come seeking loads from us that they have no fixed way of compensation. They will come to a point as high as where they want 70 per cent and so I have had them offer to take a load just for gasoline and expense money.

Q. Depending on their desire to get back and their ability to get other freight?

A. That is right.

Mr. Diehl: Are you talking about people that have offered you their services, sir?

The Witness: Yes, sir.

By Mr. Arpaia:

Q. Did you ever use them?

A. No, sir.

Q. Within the last how many years?

[fol. 3218] A. I haven't used them since maybe 1936.

Q. From your observation and experience, is this practice of trip leasing increasing or decreasing?

A. The personnel department then advises me if it is something that has anything to do with our control such as a bad condition on the platform or a doorway or something of that kind. Then it is taken care of immediately by the maintenance department.

Q. Do you have supervisor training courses and have your supervisors attended training courses in safety?

A. We took all our terminal managers and key men and put them through a school which was a supervisory course. We expended about $6,000 to give this course to these men. They in turn have used their knowledge to train any new drivers and, of course, the present men that are working under them.

Q. Do you use any highway patrol?

A. We have three highway patrolmen.

Q. Will you describe what their functions are?

A. Well, they patrol the highways and watch our trucks on the road from various angles to see that they don't get into any trouble, to see that the trucks are not hijacked, to see that they observe all the laws and regulations of the states they are going through. In a good many cases they use corrective measures with these drivers if they are doing anything wrong. They also advise them as to any particularly hazardous points on the road, particularly in the wintertime. There might be a road that is pretty well cleared [fol. 3204] away but on a certain curve there might be a patch of ice or something. They warn them about that before they get to it.

Q. Do you prescribe in your system the exact routes that your vehicles are to follow, your drivers, not only over the main highways, but through cities?

A. We prescribe the direct highway routes and the direct city routes. We cooperate with the various police departments in the cities in which we go through. The police departments have asked us to use certain streets and we prescribe those which the police departments recommend.

Q. If you select those routes going through the cities, for what purpose are they selected, with what end in view?

A. Well, more from, I believe, a safety factor.

Q. Your drivers keep logs, of course. Do all your employees punch time cards?

A. Every employee punches a time card.

Q. Do you have any other method of checking on the accuracy of a log of an employee?

A. Yes. All our vehicles are equipped with what they call a tachograph. A tachograph is a combination of two things. It is a speedometer and a recorder. It has a graph in there whereby it will show the speed of that truck at all times. It will show when the truck is moving and it will show when the truck is idle.

[fol. 3205] Q. What happens to these recordings of the tachograph?

A. We have a man who examines these recorders, these graphs, at the return of every trip when they are turned in, which is generally the following morning. He goes through them. On some routes we set the speed at 40 miles an hour, and some at 45, and a few a maximum of 50. If there are any violations of this it is turned over to the personnel department and is taken up directly with the man to show cause why he had exceeded that speed limit.

Q. Are those tachograph dises checked against the logs?

A. Yes.

Q. Those tachographs cost money to install, do they?

A. Oh, yes, they are additional equipment.

Q. About how much does it cost to install them?

A. For our fleet, about $18,000.

Q. How much money has the Adley Express Company invested in terminals since the war?

A. Since the war we have constructed two new terminals, one in Nutley, New Jersey, and one in Worcester, Massachusetts. We have made extensive repairs in Springfield and New London and we have spent approximately a half million dollars.

Q. How much of an investment has the Adley Express Company made in rolling stock since the war?

A. Close to a million dollars.

Q. Mr. Adley, your company pays Social Security taxes [fol. 3206] on all your employees?

A. Oh, yes.

Q. It pays unemployment compensation tax?

A. Yes.

Q. It pays compensation insurance, so that all your employees are covered in accordance with the laws of the various states?

A. Oh, yes.

Q. Do you provide accident and sickness benefits by law in any states?

A. We do in Rhode Island and New Jersey.

Q. The New Jersey law will be applicable January 1st. Do you have group insurance available for your employees?

A. We have a group policy which is available to all our employees whereby we pay half and they pay half. This group policy covers not only themselves, but it covers their families and gives them a hospital plan with it.

Q. How long a period of time have you had that insurance?

A. Since 1930.

Q. Mr. Adley, if a vehicle breaks down on the highway, do you have to pay your employee for the time that he waits until repairs are effected?

A. We pay him from the time he is broken down until he is released again.

Q. Do you have any overtime?

A. Overtime?

[fol. 3207] Q. Yes.

A. Oh, yes, plenty of overtime.

Q. Do you pay registration fees, of course, on your vehicles?

A. Oh, yes.

Q. Do you pay for Public Utility plates in various states where you operate?

A. Yes.

Q. Have you had interruptions, Mr. Adley, due to labor problems?

A. Yes, we have.

Q. Do you have to pay your help that stays on duty during that time?

A. We do.

Q. You have all of these preventive safety measures which you have described. Do they cost your company money?

A. Absolutely.

Q. Why do you spend that money?

A. Well, to promote safety. We feel we have an obligation to the public and we feel that we certainly don't want

our vehicles going out on the road maiming and killing people.

Q. Do you have expenses of administration, that is, office help to pay, because of withholding income taxes for employees?

A. Yes, we have to have additional clerks to take care of that.

Q. How about other taxes that you have to take care of, for instance in Philadelphia?

A. Well, in Philadelphia we have a city payroll tax which [fol. 3208] we have to deduct from our employees.

Q. And your office staff has to keep records with reference to the Social Security tax and make deductions?

A. We do.

Q. And unemployment taxes?

A. We do.

Q. Do you have such things as victory bond deductions?

A. We have those also, yes, sir.

Q. Mr. Adley, all these expenses that you have referred to now, would they apply to a man who does not own his own fleet or to the extent that he does not own his fleet?

A. I don't see how they would apply to him.

Q. You pay taxes, the Adley Express Company pays them, doesn't it?

A. Yes.

Q. Describe some of the taxes on equipment inventories and buildings.

A. Well, we pay an excise tax on our equipment in the various states and, of course, we pay a tax on all the buildings and property we have in the various states.

Q. In the cities?

A. Plus any corporation tax in each one of those states also.

Q. Mr. Adley, does your company have to pay toll charges?

A. We have to pay toll charges for going through the Holland Tunnel and over the Washington Bridge and var- [fol. 3209] ious bridges through Connecticut. That runs into about $22,000 a year.

Q. Would a man who uses owner-operator equipment be subject to those charges?

A. Not to my knowledge.

Q. Will you describe your insurance, the Adley Express Company insurance schedule? Do you have cargo insurance?

A. Yes, we do have cargo insurance.

Q. In what limits on each truck?

A. We have $150,000 on each truck.

Q. How much on terminals?

A. Well, we have in Philadelphia and Boston a half million. The other terminals range from $300,000 to $250,000. In New Haven, Connecticut, we carry a million.

Q. New Haven is your main terminal?

A. That is right.

Q. Do you have public liability and property damage insurance?

A. Yes, we do.

Q. In what limits?

A. The public liability runs from $100,000 to $300,000.

Q. You mean by that $100,000 for one person and $300,000 for any one accident?

A. That is right.

Q. Do you have a fire and theft policy?

A. Yes, we do.

Q. How much is your fleet insured for?

[fol. 3210] A. Close to two million dollars.

Q. You have described that you have workmen's compensation insurance. Do you have any other type of insurance?

A. Well, we have what you would call comprehensive public liability. Of course, all the usual forms, burglary and so on. We have our men all bonded, all our employees, to $25,000.

Q. To the extent that a man is operating vehicles on the highway without regular employees or doesn't own the vehicles, are they subjected to those items of expense?

A. I don't think they would be.

Q. How many pounds of freight a week do you carry on an average?

A. Between 11 million and 12 million pounds.

Q. Do you have a fluctuation in the freight that your system carries?

A. We have a seasonal fluctuation which will drop to a low of about eight million and sometimes reach a peak of thirteen million.

Q. Do you maintain all of your employees in spite of that fluctuation?

A. Yes.

Q. And you keep all your vehicles just the same?

A. Yes.

Q. Is your fleet geared to carry the minimum or the maximum?

A. Our fleet is geared to carry the maximum.

Q. Will you describe how your operations run?

[fol. 3211] First I will ask you this question: Do you have a paid vacation period for your employees?

A. We have paid vacations after one year.

Q. Do you provide for holiday pay?

A. We have in various states. In some states it is six paid holidays and some as much as thirteen paid holidays.

Q. Let me ask you about the way your system operates, Mr. Adley. Will you describe your operations from each terminal?

A. Well, we handle freight between all the various terminals with the over-the-road operation. We have in the terminal, we will say a distant terminal, set up routes. These routes operate every day in the performance of pick-up and delivery service.

Q. You mean a vehicle has a prescribed run every day?

A. A prescribed run every day.

Q. Go into that a little bit more.

A. This run operates regardless of whether he has one ton going on that run or ten tons. The truck moves regardless.

Q. Is it true to the same extent on pick-ups?

A. Yes, the same trucker that performs the deliveries performs the pick-ups and that is the same truck.

Q. In other words, would it be fair to say that you are providing a regular route service to all people on that run every day?

A. Definitely.

Q. Do you consider that a true common carrier service?

[fol. 3212] A. I consider it a true common carrier service.

Q. Will you describe what has been happening as a result of the use of trip leases by operators to your business in these territories covered by these daily runs?

Mr. Diehl: Could we have a little clarification, please, counsel? First I would like to have that question re-read and then I think I want to ask you a preliminary question, if you don't mind.

Exam. Lawton: Repeat the question.

(Question read.)

Mr. Diehl: Has this gentleman testified whether or not he is using trip lease to operate his runs?

By Mr. Arpaia:

Q. Do you use trip leases, Mr. Adley?

A. No.

Q. Have you ever used trip leases?

A. Once in a while back in the old days when the regulation started we used some until such a time as we could get our own equipment.

Q. Would it be fair to say until you were able to get your own equipment?

A. We were only using it until such a time as our equipment came in from the factory.

Q. From your observation and experience, what has been happening to the common carrier industry in your territory or beyond, if you know, because of the practice of using trip leases?

[fol. 3213] Mr. Diehl: If he is going to testify beyond his territory, counsel, as far as I am concerned I would require more qualification and I would have to object unless he is so qualified. If he is going to testify about areas of the country, for instance, the southeast, to which he does not operate, I will object.

Mr. Arpaia: I think we will confine this question to his own territory.

Mr. Diehl: That will be fine.

The Witness: One of the things we find, and it is not too happy a condition either, is that our straight truck load business is what we are really losing. We have tried to prevent it. We have a situation up there in the bureau whereby we have a rate committee and this rate committee approves or disapproves the rates. However, if the rate committee denies a reduction in the rate, there is nothing

to prevent the man from taking independent action. When these fellows take independent action they put in a commodity rate or an exception rating whereby they cut this truckload rate. Where it is possible we have met the truckload rate if we could even break even, but the situation has come to the point now that the rates are cut so much that we can't meet it.

By Mr. Arpaia:

Q. Can you give us some examples, Mr. Adley?

A. Well, I can give you a recent case. There was a commodity moving out of New Haven going to Philadelphia. Our rate on it is 42. The rail rate is 38.

[fol. 3214] Exam. Lawton: That is in cents per hundred pounds?

The Witness: Cents per hundred pounds. The rate was reduced to 28.

By Mr. Arpaia:

Q. Did the Adley Express Company enjoy that business before?

A. Yes.

Q. Is that 28 cent rate compensatory to an operator like you who is operating in a bona fide manner with his own fleet and his own employees and providing the service that he does to the public?

A. Absolutely not.

Q. Give us some more examples, if you can, one or two.

Exam. Lawton: On what do you base your previous answer? Do you have a cost finding department?

The Witness: We have a cost department, yes.

Exam. Lawton: And they determine your operating costs?

The Witness: They do.

Exam. Lawton: And they tell you whether in their opinion the rate is compensatory?

The Witness: That is right.

Mr. Diehl: Are you going to tell us your cost per mile system-wide during the course of your examination?

Mr. Arpaia: I don't know if we have those figures here unless the witness knows them.

The Witness: I don't know them in my mind.

[fol. 3214a] By Mr. Arpaia:

Q. Of course, your costs are divided into pickup and delivery and over-the-road?

A. That is right.

Q. Do you have a statistical department, Mr. Adley?

A. Yes.

Q. Are they constantly making studies with reference to costs?

A. Yes.

Q. Could you furnish those costs upon request?

A. We could furnish them from our records.

Q. Can you give us any other example? I don't want you to give too many, just typical cases.

A. Well, I don't know that there are so many of them.

Q. Let's take a movement like United States Rubber.

A. That is another recent case. Due to the fact that we buy a considerable amount of their tires, this business was going to be turned over to us. One of the operators hauling it, which is a trip leaser, found out about it and he cut the rate 25 cents. Of course, when he cut the rate 25 cents, the business wasn't desirable to us.

Q. Was it compensatory?

A. Not in our opinion.

Q. Let me ask you, do you have perfect balance in the movements between your various points on your system?

A. No, we don't.

Q. Where are you unbalanced, in which direction?

[fol. 3215] A. We are unbalanced going south. We have an abundance coming north, but we are unbalanced going south. We can't match it.

Mr. Diehl: Could we understand that he means by that from Philadelphia north or to what points?

The Witness: We will say from Boston to Philadelphia we are light and from Philadelphia into Boston we are heavy.

A. I would say it is increasing.

Q. Have you found that the practice of trip leasing has affected your business?

A. I find it has affected our business definitely. As I say, these fellows are out more for the straight loads because they wouldn't be interested in any miscellaneous load. As a consequence, as I said before, we have got these established runs and our trucks cover that route and they make a practice; and it is a common practice and an every-day practice to cover that route thoroughly. A good many times here is a truck in Torrington and there is a pick up in Washington Depot.

Q. Is it a town?

A. Yes. That is a hamlet. Yet we are compelled to go practically 44 miles to go and get a $2 shipment. That certainly adds to our cost without question. That is unprofitable freight. However, on the basis of our certificate, we are compelled to do that and we do it.

Q. How much does it cost you if you go to Washington Depot from Torrington to pick up a $2 shipment, approximately?

A. Well, I would say conservatively about $10.

Q. Yet you do render that common carrier service?

A. I do.

[fol. 3219] Q. What is happening from your observation while you are performing that service?

A. Well, that is where our trouble is. We are performing the service which is a public necessity and we are losing these big jobs to these gypsies or truck lessors.

Q. In your opinion, Mr. Adley, to the extent that a man uses equipment which he does not have in his possession at the time that he accepts an order to move freight, do you think that he is performing his duty as a common carrier and rendering a service based on public need and convenience?

Mr. Diehl: Mr. Examiner, I object unless you just want his opinion. I don't know whether it is going to be worth anything in this record or to the Commission.

Exam. Lawton: That is all he has asked. It is overruled.

The Witness: In my opinion, he is not ready and fit and able to perform that service. He has got the freight before he has got the vehicle. After he gets the load, then he gets the vehicle, whereby we are just in the reverse. We have the vehicle and we are ready to accept that freight.

Q. Do you consider that you are performing a true common carrier service to meet a public need and public convenience?

A. That is right.

Q. That person that you have described who uses trip leased vehicles and who doesn't engage a vehicle until he has the freight, what do you consider him?

[fol. 3220] A. I consider him a parasite.

Q. Do you think that if there weren't bona fide carriers performing the service that you have described and that you perform to big shippers, that these operators who do not own their own equipment and who engage equipment only when they have freight could continue to exist?

A. I don't think they could exist because I think we are throwing a cloak over them. We are protecting them now by performing a service which they cannot or will not perform.

Q. In the meantime, what is happening to your average weight per shipment?

A. Our average weight per shipment has dropped considerably.

Q. Does this increase your cost?

A. Certainly it increases the cost because you have more smaller shipments.

Q. From your observation and experience, Mr. Adley, do these operators who use one-way trip leases or both ways, are they interested in less than full truckloads at all?

Exam. Lawton: He has answered that once.

By Mr. Arpaia:

Q. How do these operators of this type get these full loads? How do they get that type of freight?

A. Well, I know that they call various trucking companies and tell them that they are from here or there and

that they would like to get a load either to that point or any point going in that direction. That I know from my own knowledge, because they call our terminals and I have [fol. 3221] even spoken with them myself where they are seeking these loads.

Exam. Lawton: Let me see if I understand this. They call another certificated carrier?

The Witness: They call another certificated carrier, that is right.

Exam. Lawton: This certificated carrier and you have the same rates on the same type of freight, isn't that so?

The Witness: That is right.

Exam Lawton: Assuming that you provide a good service, how would this operator in that case who uses the trip lessor be able to take the freight away from you? I can understand where he might get it if he cuts the rate.

The Witness: Of course, the fellow who makes a practice of using trip lessors, his rates are generally below a legitimate common carrier.

By Mr. Arpaia:

Q. What I wanted to get at was this: Do you think that regulation which is intended to provide common carrier service to the shipping public will be possible if this condition continues to exist?

A. I don't see how it can survive because in our own case if we are going to lose all the big drops and wind up with the isolated points and the small shippers, certainly our cost is going to be greater. If our cost is going to be greater, we will have to apply to the Commission for higher rates. [fol. 3222] With the way we are tooled up to handle the volume we have got now, we certainly could not handle the tonnage we are handling now if it was reduced to all small shipments.

Q. Let me put it this way: Do you think that the people in these towns that are remote, off the main highways, would get service if everybody was compelled to indulge in the same practice to compete?

A. I know if we followed the same practices certainly

there would be a lot of towns in our territory where the people would not get any service at all.

Q. Is the condition now more unfavorable to the legitimate, bona fide carrier, than it was *even* before regulation?

A. I didn't get the last part of your question.

Q. Is the competitive position of the legitimate, bona fide carrier who owns his own fleet and maintains that fleet, has his own regular employees, who has the expenses that you have contributed, better or worse today as a result of this growing practice that you have described than before regulation?

A. I think he is more subject to attack now than he was before regulation.

Q. Why?

A. Because they can still cut rates to any rate they want. We have got a fixed cost that we can't get away from regardless of what we do. There is nothing we can do about it. If these fellows don't have the similar expenses that we have [fol. 3223] and offer the same service and facilities that we have, naturally their cost is going to be lower.

Q. Before regulation, did they know what rate you had published or charged?

A. No. They didn't know that, but now they can get our tariff and they can see our rates. Before regulation the rate was generally a thing of confidence between you and the shipper.

Q. In other words, you consider that the competitive position to the extent that a person uses equipment on trip leases which he makes available only when he has the freight first and that of a person who maintains and keeps in readiness vehicles to transport on call or on regular route is fair or unfair?

A. Unfair.

Exam. Lawton: Has your operating ratio increased recently?

The Witness: Oh, it has been increasing right along.

By Mr. Arpaia:

Q. Have you made comparisons between your operating ratio and that of carriers who do not own their own equipment and who make it available when they have the freight?

A. I see some of them in the Manual Research, which is published here in Washington, as low as 75 and we are running about 90, 90 cents against their 75. The expense toward the dollar.

Exam. Lawton: You mean an operating ratio of 90 per cent, I take it?

The Witness: 75 cents to the dollar would be the expense and the 25 cents would be the profit.

[fol. 3224] By Mr. Arpaia:

Q. That is, for every revenue dollar——

A. The cost is 75 cents. Ours for every revenue dollar at the present time is running about 90 cents.

Q. That is, of course, before taxes?

A. Before taxes.

Q. You are out on the highway, Mr. Adley?

A. I am out on the highway considerably.

Q. In your own territory?

A. Yes.

Q. Have you seen some of this equipment on the highways that these owner-operators drive?

A. Yes, I have.

Q. Generally speaking, describe it.

Mr. Diehl: Mr. Examiner, I must object unless the gentleman will specify when and where and whether it was certificated equipment being used in interstate commerce or on certificated routes of a particular carrier and naming the carrier or at least the territory in which it operates. I think a general statement on the record of that nature isn't going to help anybody much. I therefore object.

Exam. Lawton: Can you be a little more specific?

By Mr. Arpaia:

Q. First, let me ask you this; do you have textile finishing mills located in eastern Connecticut and Rhode Island?

A. Yes, we have textile mills in eastern Connecticut and Rhode Island, at Rocky Hill, Connecticut.

[fol. 3225] Q. Have you seen vehicles with registrations from foreign states take movements out of those plants?

A. Yes, I have.

Q. What states were those vehicles registered in?

A. The majority of them were the southern states, the Carolinas and Georgia and some from Florida.

Q. Did those vehicles bear any identification?

A. No. I was looking for the identification so I could check up on them.

Exam. Lawton: Was this during some recent period?

The Witness: Yes, right along. You could go down there and see it tonight.

By Mr. Arpaia:

Q. Would you say the number of vehicles with these registrations that you have seen on the highways in Connecticut within the last year is increasing over the year previous or decreasing?

A. I would say that it has increased considerably.

Q. Will you describe in a general way the conditions of the equipment that you have noticed?

A. You will find all types. You will see some fair equipment but most of the equipment I have seen, particularly out of the south, you generally see a light Ford or a Chevrolet tractor hauling probably a 12 or 15 ton load. Here is a tractor that weighs about 6,000 pounds handling 25,000 or 30,000 pounds. For the same type load we use a 12 to a [fol. 3226] 13 thousand pound tractor to handle the same thing.

Q. Is it dangerous to have a tractor so light draw that kind of a load, and why?

A. Well, in the first place we have more braking surface on our front wheels than they have on their entire piece of equipment. At a speed of 45 or 50 miles an hour when you have got 12 to 15 tons on, you really require some braking area to stop that vehicle.

Q. Will you describe some experiences that your vehicles have had on the highways with some of these owner-operated vehicles?

Mr. Diehl: Were you there at the time? If you weren't, how can you testify on it? You have got to qualify him.

Mr. Arpaia: He is the active manager of this company.

Mr. Diehl: I will object to it unless he qualifies him.

Mr. E. K. Wheeler: Mr. Examiner, I suggest that this comes within the exception to the hearsay rule.

By Mr. Arpaia:

Q. Referring to my previous question, answer it with reference to tires, for example.

A. Well, I see some of these vehicles come in from the south, particularly one state, Delaware, I believe, where they had this little extra axle with two tires and wheels on it, which was supposed to be a third axle. I think they call it a "cheater". In other words, they have got an extra axle load and they throw this extra axle load on there and, as far as I know, that axle can't carry any weight at all or [fol. 3227] some way or other they cover the law and they can put on an additional load with this cheater axle. I know there was one fellow there who wanted to get a load of me to go back and he would take a load anywhere going south. I said "Where is your equipment?" And he showed it to me. I doubt if I could even get one of my drivers to drive it.

Exam. Lawton: What was the date of this experience, do you recall, approximately?

The Witness: Oh, I would say it was about six or seven months ago.

By Mr. Arpaia:

Q. When there is bad weather on the highways, Mr. Adley, will that direct your attention to things that you told me about?

A. We have got a high-geared operation because we have got about 12 million pounds to move and we have got to move pretty well on schedule. Of course, our greatest difficulty during rain storms and everything else, or snow storms, particularly in the wintertime, is that a good many of our delays are caused by these leased pieces of equipment. They are generally at the bottom of the hill or the top of the hill or somewhere. We have either got to push them over the hill or get them out of the way so we

can get through. In many instances they have no chains or no equipment at all which they could go through with. We finally found most of these fellows are from the south. [fol. 3228] Apparently they don't have any snow down there and when they get in our neck of the woods they really find out what skid chains are for.

Q. Have you had to provide tires, sometimes, in order to get some of those vehicles to move on the highway?

A. Well, one of my brother truckers called me up from Boston where he had one of his trucks leased and he asked me if I wouldn't be good enough to put two tires on his vehicle so at least he could get his load into Boston.

Q. What was the condition of the two tires that you had to change?

A. Well, we put two new tires on there and with the tires that we brought back I am amazed that he got as far as he did with them.

Exam. Lawton: When did this incident happen?

The Witness: That is about a year ago.

By Mr. Arpaia:

Q. Let me ask you this question first: In Connecticut, for example, do you have driver safety awards granted by the Connecticut Safety Commission?

A. Yes. We have had three drivers win the awards this year, and we had one driver win another award.

Q. Is that for safety and courtesy on the highway?

A. That is for safety on the highway and of course some outstanding precautions or help that they had extended to somebody else on the highway.

[fol. 3229] Q. Have you seen some of these vehicles that you have described with registrations from the south in their operation on the highway?

A. I didn't get your question.

Q. You said ~~you have~~ seen these vehicles with these registrations chiefly from Georgia, North Carolina, South Carolina and Florida. Have you watched them while they were driving over the highway?

A. Have I watched them?

Q. Yes.

A. I have followed some of them.

Q. What would you say about the method with which they are driven?

A. Well, I certainly wouldn't compare them with our drivers. They certainly don't extend the same courtesy and keep over to the right of the road the way our drivers do.

Q. Is their operation safe? Have you seen them stop to park?

A. I have seen them stop and park in a lunch room and sleep in their cab more than once.

Mr. Pou: Mr. Examiner, may I interrupt to inquire if he refers to all southern drivers or just the southern gypsy drivers?

Mr. Diehl: I am interested but I thought I would save time by letting him talk.

Mr. Pou: Does he refer only to the gypsy operators from [fol. 3230] the south?

The Witness: I see all types.

Mr. Pou: All of the southern drivers?

The Witness: I don't say all southern drivers.

Mr. Diehl: Do you include Associated Transport in that group you are talking about?

The Witness: No.

Exam. Lawton: What you are saying relates only to the itinerant truckers?

The Witness: That is right.

Mr. Pou: That is all right.

Mr. Arpaia: I promised Mr. Lieberman, and I think somebody else, that none of the testimony that Mr. Adley is offering here pertains to any other type of carrier except a common carrier of property. They wanted that assurance.

Exam. Lawton: You mean a common carrier of general commodities?

Mr. Arpaia: Yes.

By Mr. Arpaia:

Q. Did you send a letter out to the class one common carriers of general commodities as listed in the highway manual of 1947?

A. Yes.

Q. Does that letter represent some of the views that you have with reference to the south?

A. That is right.

[fol. 3231] Q. I show you this letter. Is this the letter which you had printed and distributed bearing your signature?

A. Yes, that is right.

Mr. Arpaia: I offer that for identification. I came down here with a hundred of these. I think everybody who has appeared here has a copy.

Exam. Lawton: You are offering this for identification?

Mr. Arpaia: Yes.

Exam. Lawton: It will be identified as Exhibit 50.

(Respondent's Exhibit 50, Witness Adley, marked for identification.)

By Mr. Arpaia:

Q. Mr. Adley, what was the response that you received to this letter?

A. I didn't get the letter out until after Thanksgiving. That is when we started to mail them out. Unfortunately right after that I had to go to the hospital for an operation. However, I received over a hundred responses through either telephone, personal contact, mail or telegraph.

Q. What were those responses? What was the nature of that response with reference to the reaction to this letter?

A. They all agreed with my views, as I stated them in the letter. A good many of them offered their moral and financial support. When a truck man offers you financial support, brother, he is really serious.

Mr. Diehl: Mr. Examiner, I should like to object to the [fol. 3232] question and move that the answer be stricken on the grounds that unless the counsel and the witness are able to produce these responses—he says he has some in writing—so we can see who they are from and the context of them. I should like the witness to be a little more qualified to discuss the responses. I don't doubt for a minute that Mr. Adley is the one who sent this out and signed it and so forth, but when he talks about a hundred responses all in favor of it, it is not likely, of course, they would

get any the other way. I think the record ought to contain some substance of the support, some summation.

The Witness: We had one the other way, too.

Mr. Diehl: How many?

The Witness: One.

By Mr. Arpaia:

Q. Did your receive some of these responses from groups, representatives of groups or associations?

A. Yes, we did.

Mr. Arpaia: Now, if Mr. Diehl is serious and he wants these responses, I will be very happy to offer them. Of course, your telephone contracts and your personal contacts, naturally, are not represented here in the form of these letters.

By Mr. Arpaia:

Q. Do you know whether or not any letters have been received in your office since you have been down here in Washington?

A. I was speaking with my secretary this morning and [fol. 3233] she told me she figures about 25 more responses.

Exam. Lawton: Does anyone want copies of these responses?

Mr. Diehl: I suggest these responses be all compiled in the form of an exhibit and put into the record along with a statement of the number to whom the letter was mailed in the initial instance.

Mr. Arpaia: I think he has already testified that the letter was mailed to all class one common carriers.

Mr. Diehl: I heard that, but I didn't hear the number.

Mr. Arpaia: There were 2500 in the manual, approximately.

Exam. Lawton: How many replies do you have?

Mr. Arpaia: I haven't counted these myself. There are some replies from such places as the University of Michigan and some from others who have heard about it.

Mr. Diehl: That is an excellent response.

Mr. Arpaia: I am not using those at all. I am only taking carriers.

By Mr. Arpaia:

Q. This motor carrier council that you have testified that you belong to has 59 members. How often do they meet?

A. Once a month.

Q. What sort of attendance do they have at those meetings?

A. They generally have about a hundred per cent attendance.

Q. You discuss these common problems when you have these meetings?

[fols. 3234-3235] A. We do.

Q. Do you know how they feel about this subject?

A. They certainly are against trip leasing. Some of them who do use trip leasing don't do it from choice, but from necessity due to the fact that they, rather than lose the business if they can get a trip lease lessor to take the load and still leave them with a small profit, will do so.

Q. Have they expressed whether or not they would want to have this practice?

A. They would rather not. They would rather see the rate set on a basis whereby they can handle it with their own equipment.

Q. Have they said whether or not the practice should be controlled or abolished?

A. They said the practice should be abolished.

[fol. 3236] Let the record show that Exhibit 50 is withdrawn. When the entire exhibit is submitted, we will give it a subsequent number.

That will be submitted on or before January 10th.

(Respondent's Exhibit No. 50, Witness Adley, withdrawn.)

By Mr. Arpaia:

Q. Mr. Adley, I want you to tell the length of your routes from each of the furthermost points.

A. Between Philadelphia and Boston from terminal to terminal it is about 340 miles.

Q. Describe the points from which you have encountered this type lease competition.

A. It has affected our entire territory due to the fact that a lot of times if it is a southern operator they can't get a load back south and they will take a load to Jersey or Philadelphia or anywhere in between so they can work themselves back.

Q. The length of the haul doesn't make any difference?

A. No.

Mr. Arpaia: That is all. You may cross-examine.

[fol. 3237] Cross-examination:

By Mr. Diehl:

Q. Mr. Adley, can you tell me, if you know from your long experience in the motor transport field, whether or not the rate level in New England is higher or lower than in other parts of the country?

Mr. Arpaia: I object, Mr. Examiner.

Mr. Diehl: I said if he knows.

Exam. Lawton: Overruled.

The Witness: I haven't made any study of rates in any other part of the country.

By Mr. Diehl:

Q. Do you participate in any agency tariff other than the New England Rate Bureau?

A. Yes, the Middle Atlantic States.

Q. Will you tell me whether or not there is a difference in the general level between those two, if you know?

A. I think the general level of the Middle Atlantic States is higher than the New England.

Q. You know nothing about any level of rates anywhere else in the United States, is that correct?

A. Yes.

Q. Do I understand you to say that you believe the Middle Atlantic level is higher than the New England level?

A. Yes.

Q. Do you know the theory upon which the level of rates in New England is based?

[fol. 3238] A. I believe they probably have more commodity and exception rates in New England than any other place in the country.

Exam. Lawton: They have more weight breakdowns, do they not, in relation to rates?

The Witness: There is certainly no comparison with the Middle Atlantic States tariff.

By Mr. Diehl:

Q. Do you know whether or not the New England level is theoretically at least based upon a cost proposition and a density of traffic rather than on any other basis?

A. It is supposed to be based on the cost.

Q. That was the original theory?

A. That was the original theory.

Q. And it is your testimony that despite that at this time the general level of rates is higher in the Middle Atlantic Bureau than it is in the New England Rate Bureau?

A. Well, I would say the class rates, the original ones, were all right, but when they put in the exceptions and the commodities and the breakdowns, it tore down the original theory of the cost-plus.

Q. How long has that tearing down process been going on?

A. The last couple of years since the war. It abated during the time of the war, but since the war has ceased it is coming in pretty strong.

Q. Did you participate in a joint use of trucking facilities under ODT regulation during the war?

[fol. 3239] A. No, we had no reason to.

Q. When I say facilities, of course, I mean rolling stock.

A. We kept our rolling stock loaded both ways.

Q. And you did not participate, then, in the ODT set-up whereby one carrier was using the facilities of another?

A. Well, as I say, the ODT looked over our operation and they were amazed at the average weight we were carrying per load.

Q. And you were enjoying almost perfectly balanced movement, is that right?

A. Yes.

Q. Are you affiliated with the American Trucking Associations in any fashion?

A. Only through the Motor Transport Association of Connecticut.

Q. Have you ever occupied an office or an official capacity with the national organization?

A. The highest office I ever held, which wouldn't be an office, was nothing more than the chairman of the maintenance committee in our territory.

Q. Haven't you been president of the Connecticut Association?

A. Yes.

Q. As such, were you not a vice president of ATA covering the State of Connecticut?

A. I think at that time there was no ATA.

Q. When were you president of the Connecticut Association?

A. You have got me thinking now.

[fol. 3240] Q. Are you familiar with the fact that the American Trucking Association, the national organization, conducted regional hearings throughout the United States as a result of which they made certain recommendations to the Commission in this proceeding?

A. I am cognizant of that, yes.

Q. Did you ever attend any regional hearings of the ATA group?

A. I attended what was supposed to be a meeting in Hartford, which is the office of Motor Transport Association, with Jack Sutherland, John Mares, who is the executive manager of the Motor Transport Association in Connecticut, and we were discussing this folder which we sent out, or the ATA sent out, sort of a questionnaire. That is the nearest I got to a regional meeting.

Q. Then that is all the knowledge you have of the regional meetings, is that right?

A. I wouldn't say it is all the knowledge I have.

Q. What else do you know?

A. You asked me what I attended. That is the one I attended.

Q. Do you know or have you any information as to any other meetings that were held that you did not attend?

A. No, I wasn't even notified of any other meetings.

Q. Have you known Mr. Jack Sutherland for a number of years?

A. Yes.

Q. Does he operate in at least a portion of the territory [fol. 3241] through which you operate?

A. I don't think he covers any of the points that I do. He belongs in a different territory altogether.

Q. Is it your statement that his company does not have any authority that corresponds with the authority that your company holds?

A. He might have a few points, but I doubt it. I think his is mostly out of New Haven going west.

Q. Do you consider him to be a pretty good businessman?

A. Well, I think he is doing a good job for Jack Sutherland.

Q. Do you know anything about the level of his rates?

A. I don't. Since he is not a competitor I wouldn't know what his rates are.

Q. You are sure he is not a competitor?

A. I have never considered him a competitor in any capacity.

Q. His headquarters is in your section of the country, isn't it?

A. I don't know if his headquarters are there, but I do know that he has sort of a terminal there in New Britain and his home is in New Britain. I believe he stated himself on the stand that his headquarters are in New York.

Q. I believe he stated his principal place of business was in Connecticut but that because it was a New York corporation he had an office in New York, but it might be considered his head-office. I don't know about that for sure.

[fol. 3242] Now, as to the document which your counsel has offered which was originally identified as Exhibit No. 50, may I ask you whether or not you prepared this after the meeting in Hartford, Connecticut, which you just mentioned?

A. Yes.

Q. Did you prepare it also subsequent to the original hearing in this proceeding at Washington, D. C., which took place in October?

A. I prepared this right after the ATA meeting.

Q. On the last page of the document it carries the date of November 24, 1948. The ATA meeting which you speak of, which one is it, the convention?

A. Yes.

Q. Held here in Washington?

A. Yes.

Q. You know that was in the early part of October, don't you?

A. That is right.

Q. And that the first hearing in this proceeding immediately followed the close of that convention?

A. That is right, but it took the printer three weeks to get this thing straightened out.

Q. Calling your attention to the first page of the printed matter, not counting the cover sheet, the next to the last paragraph in the first column on the left contains a sentence reading as follows: "'How can this be so with a common [fol. 3243] carrier whose operations are substantially conducted through trip leases or gypsies?'" Do I understand that you make no distinction between any method of trip leasing and what you call gypsy operations?

A. I make no distinction, no.

Q. Are you familiar with the fact that certain certificated carriers trip lease each other's equipment? Have you heard the testimony in this proceeding that indicates that?

A. I haven't heard anything in that respect.

Q. You say you have not heard it in this hearing?

A. No.

Q. Have you been here since Monday of this week?

A. Yes, but, of course, I wasn't here all the time.

Q. You haven't heard any witness in this proceeding talk about that theory?

A. No.

Q. Well, assuming there is testimony — and I assure you there is — to the effect that certificated carriers use each other's equipment on a trip lease basis, do you consider that in the same category with what you call gypsies, or gypsying?

A. I do. In my way of thinking, if I have a load that I cannot handle, I turn it over to anybody that parallels my

line, a certificated carrier, and I give him the full revenue from that load. I feel inasmuch as I can't handle it, then the load belongs to him if he can handle it.

[fol. 3244] Q. You have already testified that you have a substantially well balance movement, in response to my earlier questions, haven't you?

A. I didn't say it was well balanced. I told you it was off balance going south.

Q. You didn't tell me that. You may have told counsel that on direct.

A. If I didn't, I should have.

Q. I understood you to say that you had a substantially perfectly balanced movement. If I am wrong, I want to be corrected on that.

A. I had a perfectly balanced movement when you asked me about the ODT during the war, yes. I am speaking of now. We do not have a perfectly balanced movement.

Q. How badly off is that unbalanced, percentagewise?

A. Well; say 15 to 20 per cent.

Q. Suppose you illustrate to me what you mean by that, please.

A. Well, let's assume we say for easy calculation I have got a million pounds coming out of Philadelphia. I only have 800,000 pounds coming back.

Q. Did you attend the hearing in this room yesterday?

A. Yes, I did.

Q. Were you here all during the course of the hearing yesterday?

A. I was here a majority of the time.

Q. Did you hear the testimony of Mr. Smalley of the [fol. 3245] Central Truck Lines of Tampa, Florida?

A. I heard a good part of it, yes.

Q. Did you hear him testify that it was the practice of the carriers in his section of the country, because of an unbalanced movement, to use equipment not belonging to the carriers to take up the slack where the off-balance occurred?

A. Yes, I did.

Q. Did you hear him testify as to who the companies in his section of the country secured that equipment from?

A. Yes.

Q. So you heard him say that they secured it from produce dealers and exempt common carriers of fruits and vegetables and perishables?

A. That is right.

Q. Is it your opinion that the two groups which I have described as leasing equipment to the southeastern carriers are gypsies within the meaning of the term as you understand it?

A. I would classify them as gypsies also. If they are exempt carriers, by what right can they come into Boston and then turn around and grab a load going back?

Q. I will ask the questions, Mr. Witness.

A. They are balanced in Florida, but then they are unbalancing us in New England.

Q. Do you know the extent of the operations of the carriers that Mr. Smalley was speaking for?

[fol. 3246] A. The extent of it? Yes. It seems to be a sizable operation.

Q. What is the northernmost point served by Mr. Smalley's company?

A. I think he comes from as far as Georgia.

Q. What about the Great Southern Trucking Company?

A. Is that the one that goes into Chicago?

Q. No, sir.

A. It is pretty hard to remember them all.

Q. I appreciate that, but I wanted to direct your attention to the fact that none of them got to Boston, Massachusetts, or even into Connecticut.

A. Well, I know there are a lot of oranges and watermelons and everything else and they certainly come in from the south, particularly when they are on a Virginia or Carolina truck.

Q. How long has it been since you used a gypsy or any other non-carrier equipment in the performance of service for the account of Adley Express, Inc.?

A. I would say at least over ten years.

Q. Would it therefore be reasonable to assume that the gypsies know you don't use them any more, generally speaking?

A. Well, some of them know it.

Q. Despite that fact, I believe you testified that some of them have approached you since that time and offered their services?

[fol. 3247] A. Yes, sir.

Q. And when was the last time that you know about personally that a gypsy offered his services to your company?

A. Well, personally, myself, I would say it was about three months ago.

Q. Mind you, when I use the term "gypsy", I am using it as you have described it here, meaning it to include anybody who either leases their equipment to a carrier or the carrier, in turn, who uses such a person on a trip lease basis. That is what I understand you mean.

Mr. Arpaia: May I interrupt? I don't know whether I heard you correctly, Mr. Diehl. The carrier is never referred to as a gypsy. I don't think Mr. Adley intends to refer to the carrier in that manner. He is a gypsy operator. The lessor is the gypsy.

Mr. Diehl: If that is what he meant, I appreciate the correction.

Exam. Lawton: I think the term "itinerant trucker" is a little more apt. You don't have that confusion between gypsy operator and gypsy trucker.

Mr. Arpaia: I think that helps.

Mr. Diehl: I am perfectly willing to use that term "itinerant trucker", Mr. Examiner, but the witness has used the word "gypsy" and for my benefit and with the aid of counsel, has certainly made it exactly clear to me what he means [fol. 3248] by gypsies. It means to me that he includes a lot larger field than I think of when I use the term itinerant trucker because he has specifically stated that he would include the equipment of another certificated carrier or anybody else who trip leases.

Exam. Lawton: Did you mean that, Mr. Adley?

The Witness: No, I didn't. I was speaking strictly of the truck lessor. Either I misunderstood you or you misunderstood me.

By Mr. Diehl:

Q. I am perfectly willing to let the record stand the way it is.

A. I am referring to the truck lessor as the itinerant or the gypsy, whatever you want to call it.

Q. Do you include anybody that leases a truck to an operator in your term gypsy?

A. Not anybody. If it is a certificated carrier, I don't classify him as a truck lessor.

Exam. Lawton: Didn't you mean that particularly to apply to the owner-driver who owns and drives the truck?

The Witness: Yes, the owner-driver.

Mr. Diehl: That is quite an amendment from his original position on the matter, I would like to observe, Mr. Examiner.

Exam. Lawton: I don't think you need to spend too much time on that.

By Mr. Diehl:

Q. Calling your attention again to page one of your exhibit which has been identified as No. 50, the second column [fol. 3249] on page one, meaning the inside of the cover sheet, the last sentence in the incomplete paragraph beginning at the top of the second column reads "... cargo loss and damage claims are usually sustained by ...e gypsy" meaning the carrier, I take it, that employs the gypsy imposes that burden upon the gypsy. Is that your understanding?

A. Yes.

Q. Have you heard any testimony in this record to the contrary from substantial operators, including large fleet owners who do use some trip leasing in their business?

A. I haven't heard it to the contrary, no, but it is certainly my opinion if you gave one of the operators, say, four hundred pieces and when they arrived at the destination he only had 395—who do you think would be responsible for the five pieces that were short?

Mr. Arpaia: I think there ought to be some qualification there. You mean responsible to the shipper or responsible ultimately to pay for it?

The Witness: Ultimately pay for it, which I mean. It is no difference than one of our own drivers. If we give him 400 pieces and he comes back with 395 pieces and we

know we gave him 400 pieces, we certainly hold him responsible for those 400 pieces.

By Mr. Diehl:

Q. So that insofar as that practice is concerned it is no different from the way you handle your own company [fol. 3250] drivers, is that right?

A. That is right.

Q. Calling your attention to the second complete paragraph just below the incomplete paragraph that I just referred to in your Exhibit 50, the last sentence reads: "Nobody means to have taken the trouble to break down the experience as between the owner-operators and the fleet operators who own and maintain their own equipment." I again ask you, have you been present at the proceedings here and if so, have you heard any responsible trucking witness testify to the contrary?

A. I haven't seen anything and I still maintain what I say there as correct. I haven't seen any records or any testimony which would disprove it.

Q. Did you hear the testimony of Mr. Smalley yesterday?

A. I wrote the letter before I heard Mr. Smalley.

Q. After hearing his testimony, would you like to revise your opinion as expressed in the letter?

A. He is only speaking as one company.

Q. You are sure you heard Mr. Smalley testify? Didn't you hear him say he was authorized to speak for the people in his group that had held a meeting at Jacksonville, Florida?

A. I still wouldn't revise my letter.

Q. What difference does it make then whether you prepared the letter before or after his testimony? What I am really trying to get to is, did you see the exhibits introduced [fol. 3251] in this proceeding where the very thing that you there speak of has been done and those exhibits have been introduced in this proceeding and if you have seen them, can you tell me whether or not they are in answer to the question which you there propound?

A. I say they are not the answer.

Q. There have been exhibits introduced here——

A. You are operating in an area which isn't a congested area or anything else. Are you going to use that as a pattern for the whole United States?

Q. Is New York City a congested area?

A. Yes.

Q. Philadelphia, Pennsylvania?

A. That is right.

Q. Do you know about the Transamerica Freight Lines, Inc?

A. That is right.

Q. Do you know the president of that company?

A. Yes, I have a knowledge of him.

Q. If I tell you that he testified and introduced exhibits at St. Louis, Missouri, that are specifically to the contrary of your allegations in that paragraph, which I have just referred to, would that change your mind any?

A. You might find it in one particular operation where it is favorable, but I think the picture should be taken of the whole country.

Q. If I also told you that the southeastern carriers broke [fol. 3252] down the accident and safety record which indicated that the owner-operator has a better record and they enjoyed good insurance rates by the use of them, would that change your mind?

A. It still wouldn't change my mind.

Q. You are adamant on the subject, are you?

A. I simply can't be convinced otherwise yet.

Q. Again calling your attention to the next succeeding paragraph to that which I have just referred, I would like to ask you if you have heard any testimony in this proceeding relating to the care of owner-operated equipment which is or is not in accordance with the statement in that paragraph of your exhibit?

A. I don't know just what you mean.

Q. You state that the owner-operator doesn't take as good care of his unit as the employees of the fleet owner take care of the employer's equipment.

A. I don't see how he can.

Q. I asked you if you heard any testimony in this proceeding that agreed with you or was contrary to your theory or your view.

Mr. Arpaia: Mr. Examiner, I don't know what this line of questioning tends to prove, having this witness pass upon something that he heard or did not hear. He is giving his own testimony here.

Mr. Todd: What he is really asking the witness to do is to evaluate the weight of two conflicting viewpoints. That, [fol. 3253] of course, is going to be the Commission's job ultimately.

Mr. Diehl: The witness is here as an expert in his territory and I personally know that Mr. Adley has been in business for many years in that territory. However, subsequent to certain testimony being introduced here in this proceeding, he prepared this document. Subsequent to the preparation of this document other testimony has been introduced in this proceeding from, in my opinion, equally responsible carriers, that is, carriers equally responsible with Mr. Adley. It is certainly my province to determine upon what basis he is proposing to speak as he does in Exhibit No. 50 in the fashion in which he is doing. I think one of the proper ways to do it is to ask him whether or not he has heard other testimony relating to these matters in this proceeding.

Exam. Lawton: You are not going to change his opinion, that is evidence.

Mr. Diehl: I don't expect to convince Mr. Adley of anything, Mr. Examiner. That is not my purpose certainly. I would like to ask another question in connection with that with respect to owner-operators taking care of their equipment. He concludes that paragraph by saying that he doesn't believe it was so and that the Commission would prove it not so from the Commission's records.

By Mr. Diehl:

Q. Can you tell me what records you are talking about? [fol. 3254] A. Well, I have spoken to the enforcement boss in our area, and Mr. Peterson, who is the Chief of Police in Orange, Connecticut. He claims that he has more violations with that type of truck than any of the fleets. The reference to repairs is based on the condition of my fleet and other fleet owners. I can't see how an owner-driven vehicle can be repaired in any better manner or be in any better

shape than a fleet-owned truck where you have all the facilities and everything else for repairing it, all the tools, the parts, trained mechanics. In fact, we have an engineer. When we do run into a difficulty that is chronic with our fleet, we get an engineer from the factory. Either the part is changed or an improvement is made on it. I don't see how you can tell me or try to convince me that an owner-operator's vehicle is in better shape.

Q. Did you hear my last question, Mr. Witness?

The Witness: Will you restate it, please?

Exam. Lawton: Read it back.

(Question read.)

By Mr. Diehl:

Q. To whom did you have reference when you spoke of the enforcement boss?

A. I meant the enforcement officer. Whether it is the ICC or the police on the highways, it is the enforcement officer.

Q. Who is the man you spoke of? Do you mean the Chief of Police in that city?

A. Yes, in Orange, Connecticut.

[fol. 3255] Q. Will you tell me what records the Interstate Commerce Commission has from which it can determine the question raised in that paragraph?

Mr. Arpaia: Mr. Examiner, he is speaking of one sentence that refers back to two paragraphs. Obviously if he reads the first two paragraphs in connection with that paragraph, what Mr. Adley means is that the Commission record on accidents, if analyzed from their ICC accident reports, would show whether it is owner-operator or employee-operator, that if those records were developed that would prove this statement that he makes that he believes that until those records are made available there is no comparison between the safe condition and operation of an owner-driven vehicle and a fleet-operated vehicle.

Exam. Lawton: Mr. Witness, is that who you meant?

The Witness: Yes.

Exam. Lawton: When you made that reference?

The Witness: Yes, Mr. Examiner.

Exam. Lawton: You didn't mean about keeping up the appearance of the vehicle and things of that sort?

The Witness: No, mechanically.

Exam. Lawton: You didn't mean that?

The Witness: I meant mechanically, from a safety factor.

Exam. Lawton: You are talking about safety all the way through?

The Witness: Yes, sir.

[fol. 3256] Exam. Lawton: And accidents?

The Witness: Yes, sir.

By Mr. Diehl:

Q. Mr. Witness, did you compose the document which I now hold and which has been identified as Exhibit 50?

A. That is right.

Q. You accept the explanation of your counsel, however, as to what you meant about the two paragraphs which we have been talking about for some ten minutes, is that right?

Exam. Lawton: Let's not argue about this.

Mr. Diehl: Mr. Examiner, it is obvious. I asked him questions with respect to the previous paragraph. I pointed out the exact exhibit.

Exam. Lawton: I know. You don't have to make a speech about it.

By Mr. Diehl:

Q. Can you tell me now, Mr. Witness, whether or not you believe that the Commission has any records that you know about that will demonstrate clearly whether or not fleet owners take better care of their equipment than owner-operators?

A. I don't.

Q. What you are talking about in that last sentence is safety only?

A. Well, if it is in good condition it makes a safe vehicle.

Q. I call your attention to the fact that Mr. Sutherland, whom I believe you said you know, testified here that his [fol. 3257] experience demonstrated that owner-operators took better care of their equipment and had better safety

records than company-owned equipment and company-owned drivers. Did you hear him say so?

Mr. Todd: Mr. Examiner, I will object to that question as not testifying with respect to the trip lease itinerant trucker. He was talking about the owner-operator that is under a long-term lease with a carrier. This witness hasn't given any testimony with respect to that type of operation.

Exam. Lawton: That is right.

Mr. E. K. Wheeler: Mr. Examiner, furthermore I think Mr. Sutherland's testimony will show that he doesn't own any equipment.

Exam. Lawton: That is also correct.

Mr. E. K. Wheeler: So how could he draw a conclusion of that nature?

Exam. Lawton: He had owned equipment.

Mr. Diehl: He testified that he had owned equipment prior to the war, a considerable fleet, Mr. Wheeler.

Exam. Lawton: Let's proceed. Can't you take up another point? I think you have developed enough on that.

By Mr. Diehl:

Q. Calling your attention to the last paragraph in the second column on page one on your exhibit, I ask you upon what you base the statements contained therein?

A. The last paragraph?

[fol. 3258] Q. Next to the last paragraph on page one, the second column of the page.

Exam. Lawton: "And more important than owner-operators" and so forth?

Mr. Diehl: Yes, sir. I am particularly interested in the great self-interest.

The Witness: I base it on my own operation.

By Mr. Diehl:

Q. But you testify you haven't used trip leases for ten years and now you tell us as to your own operation what the difference is.

A. I will base it on this, that there is no shop other than the railroad that is as up-to-date as ours and they cannot

perform what we can can perform in our own shops. If an owner-operator has to go in for service or repairs, I don't think he can get any better job or as good as we could give in our own shop.

Q. You don't feel that because an owner-operator, speaking generally now, may have all of his capital invested in that one unit, that he will look after it any better than an employee of a company who is merely on a salary doing a job might look after the equipment in his charge?

A. I have had drivers who simonize the trucks and everything else.

Q. Would you answer my question, if you please?

Exam. Lawton: Will you read back the question?

(Question read.)

[fol. 3259] The Witness: Theoretically a man, if he owns the equipment, will take care of it, but I don't believe he will take any better care of it than our own drivers.

By Mr. Diehl:

Q. Do you agree that your drivers take no better care than he does?

A. No, we certainly insist that our drivers take care of the equipment.

Q. In the next paragraph, continuing on the next page, you there consider certain clauses in the labor contract and you refer to them specifically as certain clauses which give the employee the right to refuse to work on a vehicle which is defective in condition or equipment. Besides this clause there is another which forbids a driver to operate at an excessive speed schedule or without sufficient rest or in violation of law or ordinance.

Aren't all those things enumerated there inherent and don't they accrue to anyone and isn't anyone who operates in the fashion prohibited violating the laws of either the municipality or the state or the federal government or the rules of the Interstate Commerce Commission?

A. It is a violation, but the reason I point that out is that we cannot compel the driver to break any of these laws.

Q. How would a prescription of a rule keep a man from going fifty miles an hour if the speed limit is 45?

A. The prescription of a rule?

[fol. 3260] Q. Yes.

A. He is supposed to observe all the laws. If the law on that road is 45 miles an hour, he is in violation of the law if he goes over the 45.

Q. And the fact that you provide so in the contract doesn't change the law of the state that he is operating in, does it?

A. No. The employer cannot say to this fellow that the brakes are not very good and take it easy or something like that. The driver doesn't have to take that truck until it has good brakes. If that driver is protected under that contract, you can't discharge him or anything else.

Now, if it is an owner-operator and his brakes are not too hot and he wants to make the load, he is apt to go out with that truck.

Q. Did you hear the testimony of the owner-operators in this proceeding indicating the degree of inspection which they required to be performed before they used any vehicle on a leased trip operation?

A. No, I didn't hear that.

Q. Would you dispute the fact that such operators do have such inspection, at least it was testified that they do?

Mr. Arpaia: In view of the witness' last answer, I think this question certainly isn't proper.

Mr. Diehl: I agree with you.

By Mr. Diehl:

[fol. 3261] Q. Mr. Witness, did you ever file any complaints with the enforcement department of the Interstate Commerce Commission as to practices in the industry that we are here talking about?

A. Well, I tried to.

Q. What happened?

A. They had difficulty in finding out who owns the vehicles. There was no identification on the vehicles.

Q. How often has that occurred in your experience?

A. Many times.

Q. Have you reported what you know about it to the enforcement department of the Interstate Commerce Commission?

A. I spoke to Dean Noble. But if you don't know who they are, what can you do?

Q. Mr. Noble is the supervisor for the Interstate Commerce Commission?

A. That is right.

Q. Where is he located?

A. Hartford, Connecticut.

Q. Do you, Mr. Adley, recognize that many of the things which are contained in your letter which is identified as Exhibit No. 50 and which you use apparently as a basis for objecting to trip leasing are practices which, if indulged in, presently violate laws and regulations made thereunder presently in existence by the Interstate Commerce Commission, Bureau of Motor Carriers.

[fol. 3262] Mr. Arpaia: Are you referring now to a particular paragraph or to questions concerning full loads and tariff rates or the effect on rate structure or things like that?

Mr. Diehl: I am talking about practices which he describes in this document. I could ask him to do it the other way and tell me which ones in here don't violate some law or rule presently in existence. That is all I am trying to get at. I was asking him if he believes that many things which he enumerates here and some of which I have pointed out do, if indulged in, violate existing rules and regulations of the Commission.

The Witness: Absolutely.

By Mr. Diehl:

Q. Do you believe that the Commission is doing its best to enforce its present rules and regulations?

A. I believe they are.

Q. You are not in favor of repeal of part two of the Interstate Commerce Act, are you?

A. I don't know which is worse if this continues to go on. You might just as well cut regulations out altogether because this is becoming a matter of dog eat dog, too.

Q. Did you testify that you are now enjoying an operating ratio of about 90?

A. That is right.

Q. Have you always had that or better in your business?

A. I have had better.

[fol. 3263] Q. Have you ever had any worse than 90?

A. During the war I have had 130.

Q. Have you ever had any peacetime experience where it was as bad as 90 other than right now?

A. Prior to the war we only lost money one year and that was in 1938.

Q. Your company was in existence, was it not, in 1930, 1931, 1932, 1933 and 1934?

A. Yes.

Q. Did it make money at that time?

A. Yes.

Q. Were you one of those who sponsored the move to enact federal legislation for r[illegible]ulation of motor vehicles?

A. I was for it, yes.

Q. Do you believe that your company is now doing better or worse than it did in 1932, if you can remember, as to its operating ratio?

A. Well, if you want to know the truth, we were doing better in 1932, considering all factors on the basis of income tax and everything else.

Q. Speaking now of your operating ratio before taxation is involved, was your company doing 90 or better in 1932?

A. Yes.

Q. Do you know what the general operating ratio of the class one carriers of the United States is as published by [fol. 3264] various people, including the Interstate Commerce Commission?

Mr. Arpaia: Do you mean for any particular year now?

Mr. Diehl: I mean any recent period that he knows about.

The Witness: By particular regions or what?

By Mr. Diehl:

Q. No, for the whole United States. I believe the Interstate Commerce Commission published some statistics.

A. I saw them, but I don't recall just exactly what they said.

Q. If I suggested to you that the average for the United States of class one carriers, the operating ratio was well above 90, would you agree with me or not?

A. I would agree with you.

Q. So that considering the other class one carriers in the United States, you are not doing so badly today, is that right?

A. I am not complaining.

Q. You are not?

A. No.

Q. I misunderstood you.

A. I just want to hold what we have got. I can see a destructive Frankenstein coming here now.

Q. Do I understand it hasn't pinched you very hard yet, is that it?

A. It has affected me. After all, we do have a little vision and that is probably what keeps our company ahead, because we do have vision. We can see that this thing is very destructive.

Q. What was your operating ratio for 1947?

[fol. 3265] Exam. Lawton: That is the year for which he gave the figure of 90, as I recall it.

Mr. Diehl: I misunderstood, Mr. Examiner. I thought he said his nine-month period operating ratio for 1948 was 90. Do I misunderstand?

Mr. Arpaia: I am not sure.

The Witness: I was giving you for 1948 up to now. That will drop because in December we always lose money.

By Mr. Diehl:

Q. But you meant your 90 per cent operating ratio was for the current year?

A. That is right.

Q. What was it in 1947?

A. I am not sure, but I know it was below 90. It was around 85 or 86, but I am not sure of that exactly.

Q. And 1946?

A. I have forgotten that one.

Q. Did you ever have an operating ratio as low as 75?

A. Never.

Q. Do you know of any companies in the business in your territory that ever enjoyed such an operating ratio other than certain bus companies?

A. I think Jack Sutherland's was 75.

Q. Is that his present operating ratio?

A. The last manual I looked at, from the Transport Research he showed 75.

[fol. 3266] Do you know what the level of Mr. Sutherland's rates are?

A. I don't.

Exam. Lawton: You have gone into that once.

Mr. Diehl: He is familiar with the operating ratio of Mr. Sutherland's company and I thought he might then recall something about the rate level.

Exam. Lawton: Previously he said he didn't know about it.

By Mr. Diehl:

Q. Did you hear Mr. Sutherland testify on the stand on Tuesday?

A. Not everything.

Q. Did you hear me ask him whether or not his rates were on a general level comparable with the rates of his competitors in the territory which he serves?

A. I don't believe I was in the room when you asked that.

Q. Mr. Witness, calling your attention to what I will call page two, for convenience, of your Exhibit No. 50, next to the last paragraph you use the word "indirectly" in connection with ownership of equipment. "Either directly or indirectly". I would like to have you tell me what you mean by that.

A. Do you mean where it says the "gypsy operator does not have to worry how" etc.?

Q. No, I will point it out to you.

A. Well, I mean in the case of your situation with these Florida operators, the cattle dealers in Texas, anything unusual or something like that should be approved by the Commission.

[fol. 3267] Q. You recognize then, do you, that particular regions of the country may have a particular problem to which your general explanation would not apply?

A. That I do, yes.

Q. You mentioned the cattle country and the southeast fruit country. Is that what you had in mind?

A. That is right, that as well as the oil fields.

Q. You gave as an example to your counsel on direct examination a statement of traveling some thirty or forty miles, I believe you said, to pick up a $2 shipment. You testified, I believe, that it would cost you a minimum of $10. Have I got the example about correct?

A. Well, I used an approximate figure. I said it would cost me about $10.

Q. Can you tell me how much of that is going on in your business as of now?

A. Well, every day we are doing that. We do cover our small towns and hamlets.

Q. Do you consider the operations which you are performing to these small towns and hamlets non-profitable to the revenue of your company?

A. Yes, I imagine that is an evil that goes with your rights. You have got to service them.

Q. Have you any competitors on those little routes we are talking about or are you the sole server of those towns?

[fol. 3268] A. Very few and some of them we are practically the only trucking company that goes in there.

Q. Do you understand that you can relinquish such portions of your operating rights as you desire without authority from the Interstate Commerce Commission?

A. I have never gone into it.

Q. You are not running an eleemosynary institution, are you, sir?

A. That word is too big for me.

Q. You are running a business to make a profit, are you not?

A. That is right. By the same token I feel I have a public duty also.

Q. Which is the primary reason for you being in business, the public duty or to make a profit?

A. I believe both. The fact that we have given a good service to the public has made us a successful company.

Q. And you think the factors are equal?

A. Yes, sir.

Mr. Diehl: That is all I have just now, Mr. Examiner. Thank you.

Exam. Lawton: We will take a five minute recess.

(Short recess taken.)

Exam. Lawton: Come to order, please.
Mr. Boot, do you have any cross-examination?
Mr. Boot: Yes, sir.

[fol. 3269] Cross-examination.

By Mr. Boot:

Q. Mr. Adley, when your vehicles leave a terminal what inspection do you give your own equipment as to safety inspections?

A. I will give it to you this way: The driver has what we call a truck driver's report. When he comes in this thing lists brakes, lights and all those things. If there is any particular thing wrong he makes a check there.

Q. Other than what you explained on direct on this chart and so forth, is there anything else?

A. Then there is a set of lines on the bottom for any remarks. Then if he cannot explain it fully on that card he then takes it up with the service manager and there is a service manager on duty 24 hours a day.

Q. In those cases when he has no card the driver makes no report?

A. He has got to have a card.

Q. So far as he finds nothing wrong with the vehicle?

A. He just checks it okay.

Q. Is anything else done then?

A. That is when he comes in. Now, the truck comes in. Then it is taken by another man who takes it down to gas it up. Then the truck tires are all checked and the truck is all checked and it is given the go signal and it is ready to go. Then it is released. Then it has been all inspected.

[fol. 3270] Q. The brakes are checked during that time?

A. Everything.

Q. And the lights?

A. The lights and reflectors.

Q. A complete inspection?

A. Complete inspection.

Q. Is that done every time a truck leaves the terminal?

A. Yes, sir.

Q. How many checkers do you have at each terminal that do that kind of work?

A. There is at least one. In New Haven there are three.

Q. You have a New York terminal, have you not?

A. I have no New York terminal.

Q. Do you have a Philadelphia terminal?

A. Yes.

Q. How many trucks on an average operate out of the Philadelphia terminal?

A. Around 23 road trucks go in there on the average.

Q. There has been testimony in this record that the payrolls could be checked with the logs and assist in preventing violations. I believe you testified that you were operating somewhere around 400 vehicles, which would involve about 400 drivers.

A. That is right.

Mr. Diehl: Or more.

[fol. 3271] By Mr. Boot:

Q. Would it be practical or even feasible to check your payrolls against logs with that many drivers?

Mr. Arpaia: May I correct the interpolation of Mr. Diehl? 400 drivers or more for 400 vehicles. Those are units; units and transportation refer to straight jobs, tractors and trailers. Therefore, there wouldn't be 400 drivers for those 400 vehicles.

Mr. Diehl: Why don't we ask him how many drivers he employs?

The Witness: I would say about 250.

By Mr. Boot:

Q. On the 250, then, can you answer my question, Mr. Adley?

A. The way we check the payroll we have a time clock in every terminal and it is simple. We have no trouble checking our payroll.

Q. I believe you misunderstood my question. Would it be practical or feasible to take your time card and check it against logs to see whether or not that log showed correctly the time worked by that man?

A. Well, it wouldn't coincide for this reason: Let's assume we have a driver scheduled to go out at ten o'clock. If his truck is not ready at 11, he still punches in at ten and he gets paid for it.

Q. But he is not driving?

A. He is not driving. Now then, when he pulls out he [fol. 3272] takes his road report and punches out when he is going out. But his time card which he gets paid by is the actual hours that he is on duty, whether he is waiting for his truck or driving.

Q. Then my original question, would it be practical or feasible to check payrolls against logs?

A. Well, I don't believe you could get a true picture.

Q. That is what I wanted to know.

You have explained in several instances seeing these gypsy pieces of equipment on the road and explained their condition. How can you tell that they are gypsy equipment?

A. Well, in the first place, they have no means of identification at all.

Q. Do you know of any motor carriers who own and operate equipment without their names on them?

A. Very few. I don't know of any who don't. They always put their name on it. It may be if a new piece of equipment came and they wanted to get it on the road right away they wouldn't, but they usually get their name on there pretty quickly.

Q. Do you know of any smaller one or two truck operators that operate that way?

A. No.

Q. Could it be possible that these vehicles were owned by private carriers?

A. Well, some of them could be private carriers.

Q. Am I correct in the statement that the State of Con- [fol. 3273] necticut requires PUC tags on all for-hire trucks whether they are from Connecticut or other states?

A. Yes.

Q. Would that not identify vehicles coming into Connecticut as for-hire carriers?

A. Well, that is probably the reason why they don't have any identification on the vehicles, so they won't be compelled to take out that PUC plate.

Q. In other words, they would be violating the Connecticut PUC law if they didn't have it on?

A. That is right.

Q. That could be corrected by enforcement of the Connecticut law, could it not?

A. Well, it should be corrected, I agree with you.

Q. One other question, Mr. Adley. You explained one situation on that tire where you were called to place a tire on a vehicle. Who called you, the operator or the owner?

A. The operator who leased the vehicle.

Q. Who guaranteed payment of this tire?

A. The operator.

Mr. Boot: That is all.

Exam. Lawton: Mr. Wheeler.

Cross-examination.

By Mr. E. K. Wheeler:

Q. Will a certificated common carrier who employs trip lessors pick up the $2 shipment at Washington Depot cited [fol. 3274] in your example? I am using that only by way of illustration.

A. He doesn't offer that service.

Q. Do you have drivers that have been with you for a number of years?

A. We have had some of our drivers who have been with us over twenty years.

Q. If a driver did not take excellent care of your equipment, would you continue to employ him?

A. Certainly not.

Q. Isn't the owner-operator, who receives a percentage of the revenue, of the freight revenue from the particular haul, impelled to drive his equipment whether it is in good condition or not so as to increase its income?

A. I believe so.

Q. Does an employee of yours have the same impelling reason to take out one of your trucks that is not in good condition?

A. He does not.

Q. Does an employee driver of yours receive any greater pay if he drives in excess of safe speeds?

A. He does not.

Q. Do you favor the adoption of the rules contained in the notice of proposed rule-making issued by the Commission in this proceeding or those proposed by the ATA?

A. I don't favor the ones of the ATA.

[fol. 3275] Q. And that is because you don't believe they are sufficiently stringent to correct the conditions?

A. In the first place, I don't think the Commission could enforce them. It would require practically an Army to enforce those rules.

Q. Did you hear Mr. Sutherland's testimony in which he said that he wasn't sure what was meant by the term "owned equipment" and what was meant by the term "leased equipment"?

A. I don't believe I heard that.

Q. Do you have any difficulty in understanding the meaning of those terms after your experience in the industry?

A. No, I don't.

Q. Did you hear Mr. Sutherland testify that the leasing committee was unanimous in its adoption of the rules proposed by the ATA?

A. I did.

Mr. Diehl: Mr. Examiner, Mr. Sutherland said it was unanimous of those present at the hearing or meeting at which the final report was adopted. I would like to correct the suggested testimony.

Exam. Lawton: I believe that is correct.

By Mr. E. K. Wheeler:

Q. Do you have any knowledge as to whether or not that statement was correct?

A. Well, by a communication which I received from one of the members of the committee, it appears to me that it could not have been unanimous because in his communica-

[fol. 3276] tion this person states that he was violently opposed to a trip lease.

Mr. Diehl: I think we had better have the name of the man in the communication, Mr. Examiner, or otherwise I will move to strike the answer of the witness.

Exam. Lawton: The motion will be granted unless he means the carrier.

The Witness: Shall I give the name?

By Mr. E. K. Wheeler:

Q. Please give the name.

A. Joseph Adelizzi.

Mr. Diehl: Do you have the communication which he sent you?

The Witness: I do.

Mr. Diehl: I think we had better see it, Mr. Examiner.

By Mr. E. K. Wheeler:

Q. Mr. Adley, was this among the communications which you received in response to your letter?

A. That is right.

Q. So that it will be included among those that are supplied for the record?

A. That is right.

Mr. E. K. Wheeler: I have no further questions.

Mr. Boot: I have one question, Mr. Examiner.

Further Cross-examination

By Mr. Boot:

Q. Was Mr. Adelizzi present at the last meeting at which this was voted on?

A. I have no knowledge of that.

Q. Did Mr. Adelizzi join in the minority report as alleged [fol. 3277] by Mr. Williams?

A. Frankly, I have had no communications other than this with Joseph Adelizzi.

Exam. Lawton: Is that all?

Mr. Boot: That is all.

Further Cross-examination

By Mr. Diehl:

Q. Do I have in my hand the communication which you spoke of dated December 2nd headed "Motor Carrier As-

sociation of New York'' and signed by Joseph M. Adelizzi, Managing Director? Is that the communication you spoke of?

A. Yes, sir.

Q. The terms of the communication which I hold in my hand are the statements of Mr. Adelizzi that you say indicate to you that as a member of the committee he did not approve of the ATA report, is that correct?

A. That is right.

Q. I will ask you if anywhere in the communication he so states?

A. Well, if this is his statement it appears to me that how could he vote for the ATA's committee report?

Q. Mr. Witness, you heard my question. I asked you if anywhere in the communication Mr. Adelizzi stated that he did not approve of the report of the ATA leasing committee which has been introduced in this record?

A. He doesn't state that in the letter.

Q. Did you testify in response to Mr. Boot that you did [fols. 3278-4083] not know whether or not Mr. Adelizzi was present at the meeting where the report was adopted?

A. That is right.

Q. You do not know?

A. I do not know.

Mr. Diehl: That is all I have, Mr. Examiner.

Exam. Lawton: I take it there is nothing further?

(No response.)

Exam. Lawton: You are excused, Mr. Adley.

(Witness excused.)

Exam. Lawton: If there is nothing further at this time, as previously stated, we will adjourn to January 10, 1949, at 9:30 a.m., in this same building.

There were certain exhibits introduced at the first hearing identified by the witness Sutherland. I believe those were Exhibits 8 to 12 and his cross examination was completed.

Mr. Boot: I move they be received, Mr. Examiner.

Exam. Lawton: All those exhibits will be received in evidence.

(Respondent's Exhibits 8 thru 12, Witness Sutherland, received in evidence.)

Exam. Lawton: If there is nothing further, we will adjourn to the date which I just mentioned.

(Whereupon, at 4:35 o'clock p.m., the hearing in the above-entitled matter was adjourned to January 10, 1949 at 9:30 a.m.)

[fol. 4084] PROCEEDINGS

January 14, 1949,
Washington, D. C.

Mr. Lieberman: With the exception of Witness Garrett's testimony, we have concluded the presentation of testimony for the Household Goods Carriers we represent.

Mr. Wheeler: I would like to call Mr. Brainard.

HAROLD VINCENT BRAINARD was sworn and testified as follows:

Direct examination.

[fol. 4085] By Mr. Wheeler:

Q. Will you please state your name and address?

A. Harold Vincent Brainard, Cleveland Ohio.

Q. What is your occupation?

A. Presently student, formerly owner-operator engaged in interstate commerce.

Q. Are you a member of the International Brotherhood of Teamsters Union?

A. I am.

Q. Did you ever own and operate your own truck?

A. I did.

Q. Are you still engaged in operating your own truck?

A. I am not.

Q. How long has it been since you operated your own equipment?

A. June, 1948.

Q. When did you purchase your equipment?

A. I purchased the equipment in March, 1947.

Q. And you owned that equipment for how long?

A. Approximately 1½ years.

Q. Why did you decide to become an owner operator?
A. To be engaged in business for myself for profit.
Q. How did you finance the purchase of the equipment?
A. A mortgage through the Veterans Administration, the Bank of Ohio.
Q. The Bank of Ohio?
[fol. 4086] A. Yes, sir.
Q. You financed this equipment through a bank on a GI loan?
A. Yes, sir.
Q. Of what did that equipment consist?
A. A model 65 M2 Federal tractor.
Q. What did you pay for that equipment?
A. $8,900.

Mr. Lieberman: The tractor alone?
The Witness: That is correct.

By Mr. Wheeler:

Q. What happened to that equipment?
A. It was foreclosed and went back to the bank.
Q. Please give us the circumstances attending that repossession of the equipment.
A. The circumstances were that I had not been able to make a payment for six months. The Veterans Administration extended it more than usual and after the six months it was foreclosed.
Q. How much of a down payment did you make?
A. $2000.
Q. Did you lose all of that $2000?
A. I did.

Exam. Lawton: This is rather vague. Can't you bring out for whom he was working as owner-operator?
Mr. Wheeler: I am coming to that.

By Mr. Wheeler:

Q. For whom did you work as an owner-operator?
[fol. 4087] A. For 9 months, Continental Transportation of Cleveland, an intrastate carrier; for the remainder of the time I worked for Associated Transport, an interstate carrier.

Q. What type of compensation did you receive? How was your compensation paid to you by each of those two companies?

Mr. Ellis: To which we object in so far as it relates to intrastate transportation. It has no bearing on this proceeding. If he worked for an interstate carrier that might be pertinent.

Mr. Lieberman: I join in the objection.

By Mr. Wheeler:

Q. Does Continental have interstate rights?

A. They have interstate rights. However, they are taking no advantage of them.

Exam. Lawton: Overruled. He may answer.

The Witness: The method of compensation employed by Continental Transportation is a percentage basis and the method employed by Associated is a flat mile rate.

By Mr. Wheeler:

Q. What was the percentage you received?

Mr. Ellis: May I ask a preliminary question, Mr. Examiner?

Examiner Lawton: Yes.

Mr. Ellis: Was this arrangement with either Continental or Associated in writing?

The Witness: The arrangement with Continental was an oral contract and the arrangement with Associated was a trip lease.

Mr. Ellis: I object to any testimony about the written instrument with Associated. If there is such a document it [fol. 4088] would be the best evidence of what the conditions were.

Exam. Lawton: You have available a copy of the trip lease with Associated?

The Witness: No, sir. I have it in Washington but I do not have it here.

Mr. Lieberman: In Washington did you say?

The Witness: Yes.

Mr. Lieberman: Where are you now?

The Witness: I have it in Washington but not in the hearing.

Mr. Lieberman: It is available, however?

The Witness: Yes.

Examiner Lawton: I think it would help the record if you would provide a copy later in the hearing.

Mr. Wheeler: Mr. Examiner, we are not particularly interested in putting it in evidence but if they insist on it, we will direct this witness to produce a copy and bring it down here.

Examiner Lawton: You should surely furnish that for the record before the close of the hearing.

Mr. Lieberman: Before we cross-examine this witness.

Exam. Lawton: Yes. I think the cross-examination might be deferred. I understand there are other witnesses available.

By Mr. Wheeler:

Q. Will you please state what your arrangement was with Continental?

Mr. Ellis: I object to it on the ground that the written [fol. 4089] instrument is the best evidence.

Exam. Lawton: This is subject to the instrument being provided or motion to strike.

Mr. Ellis: I understood the arrangement with Continental was oral but that was an intrastate carrier, whereas Associated was an interstate carrier and the witness is being directed to produce the contract with Associated.

I object to any evidence as to the arrangement with Continental on the ground it is immaterial and irrelevant. It was an intrastate arrangement.

This proceeding calls for an investigation of interstate practices.

Mr. Wheeler: The witness just stated Continental had interstate rights.

Mr. Lieberman: And was not taking advantage of them.

Exam. Lawton: I do not doubt but that these carriers work in both interstate and intrastate commerce.

By Mr. Wheeler:

Q. Is Continental engaging in interstate commerce, at present?

Mr. Lieberman: If he knows.

The Witness: In my opinion, it is, yes.

Mr. Lieberman: May I ask a question at this point?

Mr. Wheeler: I wish you would withhold your cross-examination until the witness has completed his direct.

Exam. Lawton: Proceed, Mr. Wheeler.

[fol. 4090] By Mr. Wheeler:

Q. Will you tell us what compensation you received from Continental?

A. I was paid 60 per cent of the gross out of which I was required to pay an additional 4 per cent for PD and PL insurance.

Q. Did you pay for your own collision insurance?

A. Yes.

Q. What other out-of-pocket costs did you incur in the operation of your vehicle?

A. The biggest item, of course, is maintenance and the state license plates. The tires, I suppose, come under maintenance and labor. I hired a driver once or twice and, the gas and oil and so forth.

Q. The compensation which you received from Continental was or was not sufficient to pay those out-of-pocket costs and continued payments on your equipment?

A. It definitely was not sufficient.

Q. What is your statement with respect to Associated?

A. It was not sufficient.

Q. When you were operating your own equipment did you ever work in excess of the hours of labor established by the Interstate Commerce Commission?

A. Yes, I did.

Q. How often did you do so?

Mr. Lieberman: I object to the question unless tied down to the operations of a particular carrier. We have here two [fol. 4091] carriers, one an interstate carrier and one intrastate carrier.

Exam. Lawton: It would have to be tied to the interstate hauling, of course.

Mr. Lieberman: I should think so, but I do not think this witness has been so advised.

Exam. Lawton: As I understand it you performed no interstate hauling for Continental. Is that correct?

The Witness: That is correct, but to my knowledge they have interstate——

Exam. Lawton: Suppose you confine your answer to violations of the hours of labor to your hauling for Associated.

The Witness: All right, sir.

By Mr. Wheeler:

Q. Did your statement just made apply to the time you were working for Associated?

A. Yes, sir.

Q. How frequently did you violate the hours of service regulations?

A. At all times.

Q. Why did you do so?

A. Because it is impossible, in my opinion, to be able to make a profit as an owner-operator unless you do so.

Q. And in your experience even though you operated hours in excess of those prescribed by the Commission, you were unable to meet the payments on your equipment. Is that it?

A. Exactly.

[fol. 4092] Exam. Lawton: Where were these hauls from and to that you performed for Associated?

The Witness: Almost continuously from Cleveland to Springfield.

Mr. Ellis: What did he say, Miss Reporter? I cannot hear him.

(Answer read.)

Mr. Ellis: That is in the State of Ohio. That is not in interstate movement.

Mr. Lieberman: Suppose we find out what highways he traversed.

The Witness: Springfield, Massachusetts.

By Mr. Wheeler:

Q. What is the mileage between Cleveland and Springfield, Massachusetts?

A. Approximately 600 miles.

Q. Did you make that on a continuous run?

A. Sometimes yes. Sometimes it was impossible because I was too sleepy.

Q. But you drove——

A. I have driven to Springfield and back to Albany without a rest.

Q. And this is during the time you were in the employ of Associated?

A. That is correct.

Q. Did you report such trips to Associated?

[fol. 4093] A. No, I did not.

Q. Did they inquire of you as to the length of time you took in making that trip?

A. No inquiry was made whatsoever.

Q. How did you mark the hours of service on that trip in your log?

A. "Off duty" principally.

Q. What—will you explain that more in detail?

A. Well, when I had ten hours it was necessary not to account for the next ten hours that I drove and I did so by marking the log sheet "off duty".

Q. Did Associated ever make any check to determine whether or not your log was accurate or inaccurate?

A. Yes. You were required to enter the log sheet at the terminus of your run.

Q. Would not the dispatcher for Associated know that you were violating the hours of service regulations and that the log was inaccurate?

Mr. Lieberman: I object to the question on the ground that he is being called upon to testify as to something within the knowledge of another individual.

Examiner Lawton: Overruled.

By Mr. Wheeler:

Q. You may answer.

The Witness: It seems to me that the dispatcher would.

Mr. Ellis: Mr. Examiner, he was asked if he did know. [fol. 4094] He qualified that and said it seemed like it. We are not interested in his opinions.

By Mr. Wheeler:

Q. Did you stamp in and out on the trim at the terminals?

A. I beg your pardon.

Q. Did you stamp in and out on the trim sheets at the terminals of Associated?

A. Yes, I did.

Q. *On* those trim sheets show the time you left Cleveland and the time you arrived in Springfield?

A. Yes.

Q. And a comparison of those sheets with your log would disclose you were violating the hours of service regulations, would it not?

A. It would.

Mr. Lieberman: Of course that is not a necessary conclusion, Your Honor.

By Mr. Wheeler:

Q. Did you ever load your vehicle in excess of the legal limits?

A. Not with Associated.

Exam. Lawton: What kind of freight did you haul principally for Associated?

The Witness: General freight, principally.

Exam. Lawton: Did you maintain your own truck, change the tires, wash and grease your own trucks and do repair [fol. 4095] work on it?

The Witness: Yes, sir.

Exam. Lawton: How did you account for the time so spent in your log book?

The Witness: Off duty.

Exam. Lawton: Did you ever leave on a trip just after you had performed some such work on your truck?

The Witness: Yes.

Exam. Lawton: Did you still show the work that you had done on your truck as off duty?

The Witness: Yes.

Examiner Lawton: Did you load and unload your own truck?

The Witness: No.

Exam. Lawton: How did you record, stated by time, delays due to fog, and breakdowns and so forth, on your log?

The Witness: Off duty.

Exam. Lawton: You recorded that as off duty?

The Witness: Yes.

Exam. Lawton: Did Associated ever determine whether or not your log book was inaccurately kept in the particulars which you have just described?

The Witness: As far as I was concerned the log was to be made out daily with the continuity upheld. In other words, each day's log and order was to be turned in. That is as far as their supervision went in my experience.

[fol. 4096] Mr. Lieberman: Of course the answer is not responsible to questions.

Exam. Lawton: Did they ever reprimand you for not making your log out properly?

The Witness: No, sir.

Exam. Lawton: Never said anything to you about it?

The Witness: No, they did not.

By Mr. Wheeler:

Q. Have you taken an ICC physical examination?

A. Yes, sir.

Q. Did you provide Associated with copies of that examination?

A. Yes.

Q. Did you re-take the examination every year?

A. Yes.

Q. What check did Associated make of your equipment to determine that it was in safe operating condition?

A. A visual check at the beginning and end of each trip.

Q. That was purely a visual check—no further check than that?

A. That is about all they could do.

Q. They never made any over-the-road check of your equipment?

A. Of my own equipment, no.

Exam. Lawton: Did they ever test the brakes——

The Witness: Not of my equipment.

Exam. Lawton: In the terminal?

[fol. 4097] The Witness: Not of my equipment, no.

By Mr. Wheeler:

Q. Did Associated check your truck to see if the lights and horns were in working condition?

A. According to the dispatchers in New York, we have to have a turn indicator to do that.

Q. Did Associated do that?

A. They did that.

Q. What about flares, flags and fuses; did Associated check those?

A. Yes.

Q. Have you ever kept more than one log at the same time?

A. Yes.

Q. Did you do so while you were operating for Associated?

A. I did.

Q. Were any checks made by Associated of your cab to determine whether or not you had more than one log in the cab or on the vehicle at the same time?

A. No, there was not.

Q. When did you make up your log?

A. Usually at the end of the trip.

Q. When did you turn it in to Associated?

A. At the end of the trip.

Q. Was any check ever made to determine whether or not you made up your log daily, by Associated?

A. None.

[fol. 4098] Except that is, the fact that I had to turn them in every time I had a trip.

Q. What was the longest time you took in making a trip for Associated?

A. The longest time?

Q. Yes.

A. 5 days.

Q. Did you ever made a return trip light?

A. Never for Associated.

Q. You always had a load on your return trip while you were with Associated?

A. Yes, sir.

Q. During the time you were working with Associated, were you continuously employed by them?

A. Yes.

Q. And you got all the trips you could handle?

A. Not all the trips I could handle but I got sufficient trips. However, it was always a doubtful question whether you would be sent back to your home terminal in the amount of time permitting you to make a profit.

Q. Will you speak up a little louder? I am not sure the Examiner can hear you.

Examiner Lawton: Going out on these trips, how was it arranged? Was there some sort of a board to indicate when you would go out and which one of the drivers would go [fol. 4099] out, or something of that sort?

The Witness: Yes, there was a list maintained in the dispatchers office of my home terminal.

Examiner Lawton: And I presume you took your turn with other owner-operator drivers?

The Witness: Yes, sir, that is correct.

Exam. Lawton: On that list would there be company drivers?

The Witness: Yes.

Examiner Lawton: As well as owner operators?

The Witness: Yes, they would always go out first.

Exam. Lawton: That is, the company drivers got preference?

The Witness: Yes, that is right.

By Mr. Wheeler:

Q. Did you keep books on your operation as an owner-operator?

A. Yes.

Q. Did you ever figure out what your hourly wage rate was?

A. Yes, I did.

Q. What was that hourly rate?

A. About 22 cents an hour.

Q. Did that include time off the road spent in repair and maintenance of your equipment?

A. Yes, time spent on the vehicle to maintain the vehicle and to drive it.

Exam. Lawton: You say you handled general commodities for Associated?

[fol. 4100] The Witness: Yes, general freight.

Exam. Lawton: Can you give us some idea of the weight and gross revenue on any of the shipments that you transported?

The Witness: I got 17 cents a mile with Associated and 600 miles to Springfield would be about $103. It cost $70 for gasoline and left me $3 for myself.

Mr. Lieberman: What was the gas?

The Witness: $70.

Exam. Lawton: For the round trip, or one direction?

The Witness: Round trip.

Mr. Lieberman: How much did you say you got?

The Witness: Let us start from the beginning. I was paid 17 cents a mile. Let us take a case of going from Cleveland to Springfield, 600 miles.

Mr. Lieberman: One way?

The Witness: One way. 17 cents a mile gives roughly $103.

Exam. Lawton: $102 exactly.

The Witness: $102, and $102 return which was $204 gross revenue on one round, two crossings. The gasoline was $70 at that time. It is more now.

Mr. Wheeler: Speak up.

The Witness: At that time the cost of the gasoline would be $70, approximately 200 gallons of gasoline at 24.5 cents a gallon.

[fol. 4101] My overhead on a mileage basis including payment to the bank is computed to be 12 cents a mile, using the standard of 2000 miles a month. You can check me. I do not know if that comes out right.

Mr. Lieberman: Don't worry, we will check it.

By Mr. Wheeler:

Q. Did that overhead figure include your wages?

A. The overhead figure did not include my wages.

Q. What did it include?

A. It did not include gasoline. It included merely maintenance and insurance, license fees and the payment to the bank, my fixed overhead.

Q. Did it include any return on the $2000 which you had invested in this equipment?

A. I never distinguished between that. I figured my salary or the profit I made on a monthly operation was my compensation for the investment. Is that what you mean, sir?

Q. Then you did not include it in your overhead if I understand you correctly?

A. That is right, sir.

Q. That was included in the net figure which you received?

A. That is correct.

Exam. Lawton: What did this net figure amount to for one month? Do you have that in mind for any one month?

The Witness: No, I do not have any figure in mind for [fol. 4102] any one month because I — well, let's see — No, sir, I prefer not to answer that question without refreshing my memory.

Mr. Lieberman: Do I take it then that you cannot answer it? Is that it?

The Witness: That is right.

Examiner Lawton: Do you recall the most prosperous month you had while you were hauling for Associated?

Mr. Lieberman: If he made a loss he could not be prosperous.

Exam. Lawton: The best month.

Mr. Lieberman: The least loss.

The Witness: The least loss was the month of February, 1948. In that month I grossed $1,200.

Exam. Lawton: What did you figure you had left after paying all expenses, taking care of your maintenance and overhead?

The Witness: About $100.

Examiner Lawton: That is what you had to live on?

The Witness: That is correct.

Mr. Lieberman: The answer to that is, he should work for Greyvan.

By Mr. Wheeler:

Q. Did you have any accidents while you were driving on the highway?

A. None.

Q. What sleep did you average between trips when you were an owner-operator for Associated?

[fol. 4103] A. 8 hours. It was compulsory.

Q. That was between trips?

A. Yes.

Q. What was the longest period that you recall that you operated for Associated without sleep?

A. 26 hours.

Q. Did that happen often?

A. Not very often, no.

Q. Did the 17 cents a mile that Associated paid to you, cover miles that you might travel while you were empty or, did that cover only mileage when you were carrying a load?

A. You never traveled empty for Associated. You just did not travel. For instance, if I had a load — you understand, we used Associated trailers at all times.

Examiner Lawton: You merely provided the hour unit; is that correct?

The Witness: That is right. If I took one of their trailers from Cleveland to Springfield and there was no return load, I sat in Springfield until there was.

By Mr. Wheeler:

Q. Were you compensated for that time while you were waiting?

A. I was not.

Examiner Lawton: Did you ever attempt to get Associated to pay you a higher mileage rate?

The Witness: Yes, sir, we did.

[fol. 4104] Exam. Lawton: And they refused to do it?

The Witness: They cut it to 14 cents and then through the workings of the Union it went back up. Excuse me; they tried to cut it to 14 cents. They notified us they were going to cut it to 14 cents. The Union stepped in and prevented them from doing so at that time. Then there were negotiations held.

Mr. Lieberman: Between whom?

The Witness: Between the Union and the Company and it was raised to 17.5 cents or was it 14.5 cents.

Mr. Lieberman: Which is it?

The Witness: 17.5.

By Mr. Wheeler:

Q. You purchased your insurance through Associated?

A. No, I did not.

Exam. Lawton: What kind of insurance did you have to pay out of this 17.5 cents a mile?

The Witness: I had to pay fire, theft and collision on my tractor, a premium of approximately 500.

Exam. Lawton: How about public liability and property damage?

The Witness: Associated carried that.

By Mr. Wheeler.

Q. As an owner-operator were you covered by industrial compensation, social security and unemployment compensation?

[fol. 4105] A. I was not.

Q. Did you enter into separate trip leases each time you made this run from Springfield to Cleveland?

A. Yes, separate trip leases.

Q. Was there any long-term arrangement between you and Associated?

A. None.

Q. So far as you know, were any of the owner-operators with whom you were associated, at the time you were associated with Associated Transport, covered by long-term leases?

Mr. Lieberman: I object to the question on the ground he has not been qualified as to such knowledge. Last night the same objection was raised to the testimony of some of my witnesses and the objection was sustained.

Mr. Wheeler: That is not a fact.

Mr. Ellis: I want the record to show he has not testified there was anyone else engaged in this business for Associated: He is the only operator so far as the record shows.

Examiner Lawton: You can qualify him in that respect.

By Mr. Wheeler:

Q. Were there owner-operators in the employ of Associated at the time you were working for them?

A. Yes, there were.

Q. Were there many?

A. Yes, sir.

Q. Do you know approximately how many?

[fol 4106] A. 20.

Q. Did you know these other owner-operators?

A. Yes, sir, I knew them.

Q. Did you come into contact with them frequently?

A. Yes.

Q. Did you discuss with them your arrangement with Associated?

A. Yes.

Q. Did you discuss with them their arrangement with Associated?

A. Yes.

Q. Was your arrangement with Associated the same as all the other drivers with whom you had these discussions?

Mr. Ellis: Objection. It is hearsay. It is what somebody told him.

Mr. Lieberman: I join that objection.

Exam. Lawton: Overruled. He has merely asked if, as far as he knows, the arrangements were the same, directed, I presume as to whether it was a trip lease or long-term lease.

Mr. Lieberman: I direct your attention, sir, to the fact that last night when we had independent truckmen on the stand here and they were asked substantially the same type of questions, on objection by present counsel the objection was sustained on the ground apparently it was hearsay. I see no reason why this witness should be permitted to answer.

Mr. Wheeler: That is not a fact.

Exam. Lawton: My recollection is different.

[fol. 4107] Mr. Lieberman: That is my recollection.

The Witness: Will you repeat the question, please?

(Record read.)

The Witness: Yes.

By Mr. Wheeler:

Q. Did you see the trip leases under which they were operating?

A. Yes, sir.

Q. Did any of them have long-term leases?

A. Not to my knowlege.

Q. Were they all operating on the same basis you were, so far as compensation was concerned?

Mr. Lieberman: I object. We are going into the details of contractual relationships with other parties.

Mr. Wheeler: Did you get the answer?

The Reporter: I did not hear an answer.

Exam. Lawton: Read the question.

(Question read.)

Exam. Lawton: Objection sustained.

By Mr. Wheeler:

Q. I believe you stated you had seen copies of the contract between Associated and the other owner operators. Is that right?

A. Yes.

Q. Did those trip-lease contracts specify an amount of compensation on their face?

Mr. Lieberman: I object to the question. It is again going [fol. 4108] to contractual relationships between other parties who are not present here subject to cross-examination.

Exam. Lawton: I think that is well taken. You cannot go into the details of the contracts between these other people.

Mr. Wheeler: I am asking this witness what he saw.

Mr. Lieberman: I submit we should have a ruling.

Exam. Lawton: Objection sustained.

By Mr. Wheeler:

Q. How often did Associated pay you?

A. Rather irregularly.

Q. What do you mean by that statement?

A. Well, I was working for Associated for approximately 2 months before I received my first check.

Q. How were your payments thereafter?

A. Spasmodically made.

Q. Did any of the other owner-operators under trip lease to Associated during the same period that you were trip leased to Associated, lose their equipment?

Mr. Lieberman: I object to the question on the ground it is immaterial even if he knew, and I do not think he has been qualified to testify with respect to those matters.

By Mr. Wheeler:

Q. Do you know whether or not they lost their equipment?

Mr. Lieberman: I submit the term "lost" is rather indefinite.

Examiner Lawton: Can you be more specific?

[fol. 4109] Mr. Wheeler: I will ask if they lost their equipment in the same way he lost his. Was it repossessed?

Mr. Ellis: Unless he knew the arrangement with the bank and how much was paid down and how much was paid later——

Mr. Wheeler: I believe he does know that.

Exam. Lawton: You mean if it was repossessed by the bank?

Mr. Lieberman: There may be one of a dozen factors that may have no bearing on the issues of leasing here.

Exam. Lawton: Overruled. He may answer.

The Witness: Yes.

Q. How many?

A. I personally know of three.

Exam. Lawton: They may have refused to haul when they had an opportunity. There might have been a number of reasons.

Mr. Lieberman: They might have been lazy.

Mr. Ellis: They might have been handy with a lead pencil, too.

Exam. Lawton: Do you have many more questions?

Mr. Wheeler: Yes, I do.

Exam. Lawton: We will recess for lunch then until 1:30.

(Whereupon at 12:05 a.m. the hearing was recessed to reconvene at 1:30 p.m.)

[fol. 4110] Afternoon Session

Exam. Lawton: Come to order, please. The hearing is resumed.

Mr. Wheeler: Mr. Examiner, I believe the witness now has a copy of the trip lease entered into between himself and Associated which was requested by counsel.

Exam. Lawton: Let me look at it.

(Document is handed to Examiner Lawton.)

Exam. Lawton: Pass it around counsel, please. Off the record.

(Discussion off the record.)

Examiner Lawton: Let us proceed.

HAROLD VINCENT BRAINARD resumed his testimony as follows:

Direct examination (continued)

By Mr. Wheeler:

Q. Mr. Brainard, have you ever been obliged, while you were in the service of Associated, to pay out of your own pocket for damages to cargo hauled by your truck?

A. No, sir.

Q. Have you ever been obliged when in their service to pay for damages done to the general public by your truck?

A. No, sir.

Q. Was it your feeling while so engaged, while in the service of Associated, that they exercised control over your operation?

Mr. Ellis: We object to what his feeling was.

[fol. 4111] Mr. Lieberman: We are only interested in the facts if there were control.

Exam. Lawton: I think we had the same question of another witness.

Overruled.

The Witness: I feel that any control was very loose.

By Mr. Wheeler:

Q. Did you have any individual control over the contract which you signed with Associated?